IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

PLASTRONICS SOCKET PARTNERS, LTD., AND PLASTRONICS H-PIN, LTD., PLAINTIFFS,	)(	CIVIL ACTION NO. 2:18-CV-14-JRG-RSP
VS.	)(	MARSHALL, TEXAS
DONG WEON HWANG, HICON CO. LTD., DEFENDANTS.	)(	JULY 11, 2019 2:00 P.M.

TRANSCRIPT OF JURY TRIAL

BEFORE THE HONORABLE JUDGE RODNEY GILSTRAP

UNITED STATES CHIEF DISTRICT JUDGE

FOR THE PLAINTIFFS:
Ms. Katarzyna Brozynski
Mr. Antonio Devora
Mr. Bart Dalton
Spencer Fane, LLP
5700 Granite Parkway
Suite 650
Plano, Texas 75024

COURT REPORTER:
Ms. Shelly Holmes, CSR, TCRR
Official Court Reporter
United States District Court
Eastern District of Texas
Marshall Division
100 E. Houston Street
Marshall, Texas 75670
(903) 923-7464

(Proceedings recorded by mechanical stenography, transcript produced on CAT system.)

FOR THE PLAINTIFFS:

Mr. Brian Bear
Spencer Fane, LLP
1000 Walnut Street
Suite 1400
Kansas City, Missouri 64106

Mr. Robert Christopher Bunt
Parker, Bunt & Ainsworth, PC
100 East Ferguson
Suite 418
Tyler, Texas 75702

FOR THE DEFENDANTS:

Ms. Elizabeth DeRieux
Capshaw DeRieux, LLP
114 East Commerce Avenue
Gladewater, Texas 75647

Mr. Russ Emerson
Mr. Charlie Jones
Ms. Stephanie Sivinski
Ms. Debbie McComas
Ms. Tiffany Cooke
Haynes & Boone, LLP
2323 Victory Avenue
Suite 700
Dallas, Texas 75219

Mr. Samuel Lee
Mr. Jay Hoon Byun
Yulchon LLC
Parnas Tower, 38F, 521 Teheran-ro
Gangnam-gu, Seoul 06164, Korea

P R O C E E D I N G S

(Jury out.)

COURT SECURITY OFFICER: All rise.

THE COURT: Be seated, please.

All right. Are the parties prepared to read into the record those items from the list of pre-admitted exhibits used during yesterday's portion of the trial?

MR. BUNT: Yes, Your Honor, we are.

THE COURT: Please proceed, Mr. Bunt, for the Plaintiffs.

MR. BUNT: Plaintiffs had the following exhibits come in yesterday: PX-251, PX-253, PX-902, PX-906, and PX-922.

THE COURT: Any objection from Defendants?

MS. COOKE: No, Your Honor.

THE COURT: Do Defendants have a similar rendition to offer?

MS. COOKE: We do, Your Honor.

THE COURT: Please proceed.

MS. COOKE: DX-14, DX-42, DX-58, DX-65, DX-82, DX-25 -- excuse me, 225, DX-350, DX-353, DX-403, DX-426, DX-441, and DX-443.

THE COURT: Any objection from Plaintiffs?

MR. BUNT: No objection, Your Honor.

THE COURT: All right. We'll next proceed to

conduct -- or the Court will proceed to conduct a formal charge conference on the record.

I have considered the submissions, both the original and amended submissions from the parties with regard to the final jury instructions and the verdict form. I have met with the parties in chambers through counsel to review those submissions, as well as additions thereto that the Court has added to the process. I've taken into account the input offered by the parties informally in chambers.

I've generated and delivered to the parties what the Court believes to be an appropriate and accurate final jury instruction and verdict form. The parties have had an opportunity to review the same.

And at this time, we'll proceed to conduct a formal charge conference where the parties, through counsel, may offer such objections to the verdict form and the final jury instructions as they believe the best interest of their clients dictate.

I'd like to ask whoever is going to speak for both Plaintiffs and Defendants to go to the podium together. We'll begin with the final jury instructions. I'll go through the document on a page-by-page basis.

At any point in that process where either side believes that something has been included that is improper or something has been omitted that is proper and they

believe an objection is appropriate and necessary, then they can lodge those objections as we get to that page within the document.

By going through each document on a page-by-page basis, it's the Court's intent to ensure that every possible issue is covered and both sides are afforded a full and complete opportunity to make a record with regard to the charge and the verdict form.

All right. Who's going to represent Plaintiffs in this process?

MR. DEVORA: Your Honor, Tony Devora.

THE COURT: Go to the podium.

Who's going to represent Defendants?

MS. MCCOMAS: Debra McComas.

THE COURT: All right. As I said, we'll begin with the final jury instructions. I'll turn to Page 1 of that document. Is there objection to anything on Page 1 from either Plaintiffs or Defendants?

MS. MCCOMAS: Nothing from Defendants, Your Honor.

MR. DEVORA: Nothing from Plaintiffs, Your Honor.

THE COURT: Turning then to Page 2 of the final jury instructions, is there objection from either party?

MS. MCCOMAS: Nothing from Defendants, Your Honor.

MR. DEVORA: Nothing from Plaintiffs, Your Honor.

THE COURT: Turning to Page 3, are there

objections?

MS. MCCOMAS: None from Defendants, Your Honor.

MR. DEVORA: None from Plaintiffs, Your Honor.

THE COURT: Turning to Page 4, are there objections?

MS. MCCOMAS: None from Defendants, Your Honor.

MR. DEVORA: None from Plaintiffs, Your Honor.

THE COURT: Turning to Page 5, are there objections?

MS. MCCOMAS: None from Defendants, Your Honor.

MR. DEVORA: None from Plaintiffs, Your Honor.

THE COURT: Turning to Page 6, are there objections?

MS. MCCOMAS: None from Defendants, Your Honor.

MR. DEVORA: None from Plaintiffs, Your Honor.

THE COURT: Turning next to Page 7, are there objections?

MS. MCCOMAS: None from Defendants.

MR. DEVORA: Your Honor, Plaintiffs object to Page 7 for lack of inclusion of an instruction on inducement by the DBA.

THE COURT: All right. That objection is overruled.

Is there anything else objectionable on or omitted from Page 7 from either party?

MR. DEVORA: None at this time from Plaintiffs, Your Honor.

MS. MCCOMAS: None from Defendants, Your Honor.

THE COURT: All right. Then turning to Page 8, is there objection from either party?

MS. MCCOMAS: Your Honor, Defendants object to the exclusion of a mere marketing instruction. The specific instruction Defendants have proposed is found at the joint pre-trial order, Exhibit E, Docket 276-7. It's at Page 19.

THE COURT: All right. That objection is overruled.

Is there anything else from either party on Page 8?

MR. DEVORA: None from Plaintiffs, Your Honor.

THE COURT: Anything further from Defendants?

MS. MCCOMAS: No, Your Honor.

THE COURT: In that case, let's turn to Page 9 of the final jury instructions, is there an objection here from either party?

MS. MCCOMAS: None from the Defendants, Your Honor.

MR. DEVORA: Your Honor, Plaintiffs object to Page 9 for also lack of inclusion of an instruction on inducement by the DBA.

THE COURT: That objection, likewise, is

overruled.

Anything further on Page 9 from either party?

MS. MCCOMAS: Not from Defendants, Your Honor.

MR. DEVORA: Nothing further from Plaintiffs, Your Honor.

THE COURT: All right. Then turn to Page 10, and I'll ask if there's objection from either party to anything either included in Page 10 or omitted from Page 10?

MS. MCCOMAS: Nothing from Defendants.

MR. DEVORA: Nothing from Plaintiffs, Your Honor.

THE COURT: Next is Page 11. Is there any objection to anything on or omitted from Page 11?

MS. MCCOMAS: No objection from Defendants.

MR. DEVORA: None from Plaintiffs, Your Honor.

THE COURT: Turning then to Page 12, is there objection?

MS. MCCOMAS: No objections from Defendants.

MR. DEVORA: No objections from Plaintiffs, Your Honor.

THE COURT: Turning to Page 13, is there objection?

MS. MCCOMAS: Defendant -- excuse me. Defendants object to the last clause of the first paragraph reflecting Plastronics's positions on damages, and expressly to the reference to a reasonable royalty because Plaintiffs have

not put on a case for royalties.

THE COURT: All right. That objection is overruled.

Anything further on Page 13 from Defendants?

MS. MCCOMAS: Nothing, Your Honor.

THE COURT: Anything on Page 13 from Plaintiffs?

MR. DEVORA: None, Your Honor.

THE COURT: Then we'll turn to Page 14 of the final jury instructions. Is there objection here from either party?

MS. MCCOMAS: Nothing here, Your Honor.

MR. DEVORA: Nothing on Page 14 from Plaintiffs, Your Honor.

MS. MCCOMAS: Let me try that one again. Nothing from Defendants, Your Honor.

THE COURT: It made it in the transcript the first time.

MS. MCCOMAS: Thank you.

THE COURT: All right. We're now at Page 15 of the final jury instructions. Is there any objection here from either party?

MS. MCCOMAS: No objections from Defendants.

MR. DEVORA: No objections from Plaintiffs, Your Honor.

THE COURT: Next is Page 16. Is there objection?

MS. MCCOMAS: No objection from Defendants.

MR. DEVORA: No objections from Plaintiffs, Your Honor.

THE COURT: Next is Page 17. Is there objection from either party?

MS. MCCOMAS: Defendants object to the characterization of Plaintiffs' claims as including failing to provide an accounting based on the Judge's construction of the accounting provisions of the Assignment Agreement. There's no claim left for an accounting against Mr. Hwang as a matter of law. The provision applies only where royalties are due and this Court has already held that Plaintiffs have failed to make that showing. That's in Docket 287 at 15 through 16.

THE COURT: That objection is overruled.

Is there anything further from Defendants on Page -- on this page?

MS. MCCOMAS: Nothing further from Defendants.

THE COURT: Anything on this page from Plaintiffs?

MR. DEVORA: No objection from Plaintiffs, Your Honor.

THE COURT: All right. Then that will bring us to Page 18. Is there objection here from either party?

MS. MCCOMAS: None from Defendants.

MR. DEVORA: No objection from Plaintiffs, Your

Honor.

THE COURT: Next is Page 19 of the final jury instructions. Is there objection here from either party?

MS. MCCOMAS: No objection from Defendants.

MR. DEVORA: Your Honor, Plaintiffs object to the last sentence of the paragraph starting with Paragraph 3. We believe that this -- the last sentence starting with "royalties and gross sales" is improper characterization of the contract.

THE COURT: All right. That objection is overruled.

Anything further on Page 19?

MR. DEVORA: Nothing further from Plaintiffs, Your Honor.

THE COURT: Anything here from Defendants?

MS. MCCOMAS: Nothing from Defendants, Your Honor.

THE COURT: Then we'll turn to Page 20 of this final jury instruction. Is there objection here from either party?

MS. MCCOMAS: Nothing from Defendants, Your Honor.

MR. DEVORA: Your Honor, Plaintiffs object to Page 20 as it should include an instruction as to a material breach and what a material breach is of the Assignment Agreement.

THE COURT: That objection is overruled.

Anything further from Plaintiffs on Page 20?

MR. DEVORA: Nothing further on Page 20, Your Honor.

THE COURT: Turning then to Page 21. Is there objection from either party?

MS. MCCOMAS: Your Honor, Defendants object to the paragraph that holds over between Page 21 and 22, and specifically that there's no evidence of lost royalties.

In this Court's prior summary judgment rule -- ruling -- excuse me -- there's no evidence of lost royalties in this Court's prior summary judgment ruling at Docket 287 at 16 through 17 -- would prohibit a lost royalty claim, therefore, the jury should be instructed that any breach prior to January 19, 2014, is barred as a matter of law.

THE COURT: That objection is overruled.

Anything further on Page 21 from either party?

MS. MCCOMAS: Nothing from Defendants, Your Honor.

MR. DEVORA: No objections to Page 21, Your Honor.

THE COURT: All right. That will bring us to Page 22. Is there any objection here from either party?

MS. MCCOMAS: Your Honor, Defendants object to the reference -- the broad reference of the claim for tortious interference and conspiracy, including any business relationship with electrical suppliers and/or manufacturers.

The pleadings should limit the Plaintiffs to HiCon USA and HighRel as the only potential actors.

THE COURT: All right. That objection is overruled.

Anything further from either party on Page 22?

MS. MCCOMAS: Nothing from Defendants, Your Honor.

MR. DEVORA: No objections to Page 22 by Plaintiffs, Your Honor.

THE COURT: Turning then to Page 23, is there objection from either party?

MS. MCCOMAS: Nothing from Defendants, Your Honor.

MR. DEVORA: Nothing from Plaintiffs, Your Honor.

THE COURT: Turning to Page 24, is there objection from either party?

MS. MCCOMAS: Nothing from Defendants, Your Honor.

MR. DEVORA: Nothing from Plaintiffs, Your Honor.

THE COURT: Turning then to Page 25, is there objection from either party?

MS. MCCOMAS: No objection from Defendants, Your Honor.

MR. DEVORA: No, objections from Plaintiffs, Your Honor.

THE COURT: Then turning to Page 26, which is the last page of the final jury instructions, is there objection from either party?

MS. MCCOMAS: None from Defendants.

MR. DEVORA: None from Plaintiffs, Your Honor.

THE COURT: All right. We'll next take up as a part of this formal charge conference the verdict form.

Turning to that document, the first page has the style and heading of the case. Is there any objection to anything on the first page of the verdict form?

MS. MCCOMAS: Nothing from Defendants, Your Honor.

MR. DEVORA: Nothing from Plaintiffs, Your Honor.

THE COURT: Second page of the verdict form has various terms and their definitions or what they refer to. Is there objection here from either party?

MS. MCCOMAS: Nothing from Defendants, Your Honor.

MR. DEVORA: Nothing from Plaintiffs, Your Honor.

THE COURT: Turning to the next page wherein Question 1 is located, is there objection to Question 1 or anything on this page from either party?

MS. MCCOMAS: Nothing from Defendants, Your Honor.

MR. DEVORA: Your Honor, Plaintiffs object to Question 1 because it doesn't include a question as to induced infringement by the DBA.

THE COURT: All right. That objection is overruled.

Turning then to the second question on the next page, anything of an objectionable nature from either party

here?

MS. MCCOMAS: No objections from Defendants, Your Honor.

MR. DEVORA: No objections from Plaintiffs, Your Honor.

THE COURT: Turning to the next page wherein Question 3 is found, is there objection from either party?

MS. MCCOMAS: Nothing from Defendants, Your Honor.

MR. DEVORA: Nothing from Plaintiffs, Your Honor.

THE COURT: Turning to the next page where Question 4 is found, is there any objection from either party?

MS. MCCOMAS: Nothing from Defendants, Your Honor.

MR. DEVORA: Your Honor, Plaintiffs object to Question 4 as it should read that there's a material breach of the Assignment Agreement.

THE COURT: All right. That objection is overruled.

Turning next to the next page where Question 5 is found, is there objection here from either party?

MS. MCCOMAS: No objection, Your Honor.

MR. DEVORA: Your Honor, Plaintiffs object to Question 5, again, as it should include a material breach of the Assignment Agreement.

THE COURT: All right. That objection is

overruled.

Turning to the next page where Question 6 is located, is there objection here from either party?

MS. MCCOMAS: No objection from Defendants, Your Honor.

MR. DEVORA: No objection from Plaintiffs, Your Honor.

THE COURT: Turning to the next page wherein Question 7 is found, is there objection from either party?

MS. MCCOMAS: No objection from Defendants, Your Honor.

MR. DEVORA: No objections from Plaintiffs, Your Honor.

THE COURT: Turning to the next page of the verdict form wherein Question 8 is located, is there objection from either party?

MS. MCCOMAS: Defendants object to the lack of substantial evidence to even submit this question to the jury, Your Honor.

THE COURT: That objection is overruled.

Is there objection to Question 8 or anything on this page from Plaintiffs?

MR. DEVORA: No objection to Question 8, Your Honor.

THE COURT: Turning to the next page of the

verdict form wherein Question 9 is located, is there objection from either party?

MS. MCCOMAS: No objection to that question, Your Honor, but we do object to the exclusion of a prior material breach question, the exclusion of the ambiguity questions for the jury to decide, and the omission of a limitations question on the breach of contract.

THE COURT: All right. Those objections are both noted and overruled.

Is there any other objection to Question 9 or anything on that page?

MS. MCCOMAS: Nothing from Defendants.

MR. DEVORA: No objection to Question 9 by Plaintiffs, Your Honor.

THE COURT: Turning to the next page of the verdict form wherein Question 10 is located, is there objection here from either party?

MS. MCCOMAS: None -- none from Defendants, Your Honor.

MR. DEVORA: No objection to Question 10 by Plaintiffs, Your Honor.

THE COURT: Turning to the next page of the verdict form wherein Question 11 is located, is there objection from either party?

MS. MCCOMAS: The Defendants object to the

submission of Question No. 11 because there's no substantial evidence to support its submission.

THE COURT: That objection is overruled.

Is there any objection to Question 11 from Plaintiffs?

MR. DEVORA: Your Honor, Plaintiffs object to Question 11 for mere consistent reasons, that it should be material breach of the Assignment Agreement.

MS. MCCOMAS: Oh, Your Honor, I'm so sorry. I misread which one we're on. We don't object -- no, this is Plastronics submitting against us, right?

THE COURT: Did Plastronics prove that Mr. Hwang breached?

MS. MCCOMAS: I'm sorry, Your Honor.

We -- we renew our objection.

THE COURT: Let's just make sure we're completely clear, counsel.

Is there objection from either party to Question 11 or anything on the page where Question 11 is located within the verdict form?

MS. MCCOMAS: Thank you, Your Honor.

Defendants object for the lack of substantial evidence to support submission of Question 11 to the jury.

THE COURT: That's overruled.

Do Plaintiffs have an objection to Question 11?

MR. DEVORA: Your Honor, Plaintiffs object to Question 11 as we -- to provide consistency in that it should be a material breach of the Assignment Agreement.

THE COURT: All right. Consistent with my prior rulings, that is also overruled.

Turning next to the following page of the verdict form wherein Question 12 is situated, is there objection from either party?

MS. MCCOMAS: Nothing from Defendants, Your Honor.

THE COURT: Anything from Defendants -- excuse me, Plaintiffs? Question 12, Mr. Devora?

MR. DEVORA: No objection, Your Honor.

THE COURT: Turning next to Question 13 on the following page of the verdict form, is there objection here from either party?

MS. MCCOMAS: Nothing from Defendants, Your Honor.

MR. DEVORA: Nothing from Plaintiffs, Your Honor.

THE COURT: Turning next to Page -- excuse me, turning next to Question 14 on the following page of the verdict form, is there objection here from either party?

MS. MCCOMAS: Defendants object to the lack of substantial evidence to support submitting a damage question to the jury.

THE COURT: That's overruled.

Is there objection from Plaintiffs to anything regarding Question 14?

MR. DEVORA: Your Honor, Plaintiffs object to Question 14 for lack of -- for the sake of consistency. It should read: Material breach of the Assignment Agreement.

THE COURT: That's overruled.

Turning to the next question wherein Question 15 is found, is there objection here from either party?

MS. MCCOMAS: Defendants object to the lack of substantial evidence to support a tortious interference claim going to the jury.

THE COURT: That objection is overruled.

Is there objection here from Plaintiffs?

MR. DEVORA: No objection to Question 15 by Plaintiffs, Your Honor.

THE COURT: Turning to the following page wherein Question 16 of the verdict form is found, is there objection here from either Plaintiffs or Defendants?

MS. MCCOMAS: Defendants object to the submission of Question 16 because there's not substantial evidence to support submitting a conspiracy claim against Mr. Hwang.

THE COURT: That objection is overruled.

Is there objection here from Plaintiffs?

MR. DEVORA: No objection to Question 16 by Plaintiffs, Your Honor.

THE COURT: Turning to the succeeding page of the verdict form, wherein Question 17 is located, is there objection here from either party?

MS. MCCOMAS: Defendants object to the submission of Question 17 because there's not substantial evidence to support any proximate cause of damages to Plastronics Socket.

THE COURT: That objection is overruled.

Is there objection to Question 17 from Plaintiffs?

MR. DEVORA: No objection to Question 17 by Plaintiffs, Your Honor.

THE COURT: Then I'll turn to the following page wherein Question 18 is situated. Is there objection here from either Plaintiffs or Defendants?

MS. MCCOMAS: Defendants object to Question 18 as there's not substantial evidence to support actual malice.

THE COURT: That objection is overruled.

Is there any objection here from Plaintiffs?

MR. DEVORA: No objection to Question 18 by Plaintiffs, Your Honor.

THE COURT: Turning then to Page -- the following page where Question 19 of the verdict form is found, is there objection here from either party?

MS. MCCOMAS: No objections, Your Honor.

THE COURT: Anything from Plaintiffs?

MR. DEVORA: No objection to Question 19, Your Honor.

THE COURT: Then we'll next turn to the following page wherein Question 20 of the verdict form is located. Is there objection here from either party?

MS. MCCOMAS: Your Honor, Defendants object because there's no evidence to support a malice question.

THE COURT: Any objections here from Plaintiffs?

MR. DEVORA: No objections, Your Honor.

THE COURT: Defendants' objection to Question 20 is overruled.

Turning to the next page wherein Question 21 is located, is there objection here from either party?

MS. MCCOMAS: Defendants object to Question No. 21 for lack of substantial evidence to support a damage question going to Mr. Hwang for exemplary damages.

THE COURT: That objection is overruled.

Is there any objection here from Plaintiffs?

MR. DEVORA: No objection from Plaintiffs, Your Honor.

THE COURT: Turning to the next page which is the final page of the verdict form, is there any objection here from either party?

MS. MCCOMAS: No objection from Defendants, Your Honor.

MR. DEVORA: No objection from Plaintiffs, Your Honor.

THE COURT: All right. That completes the formal charge conference.

The Court needs a short additional period of time in which to make duplicate copies of these documents.

As you may be aware, it's the Court's practice to deliver to the jury when it retires to deliberate eight copies of the final jury instructions in written form so each juror will have their own hard copy to take with them and refer to during their deliberations. And I'll also send back to the jury at that time one clean verdict form for their consideration.

I'll need a few moments to put these documents together, but as soon as that's done, I intend to return to the bench at which time we will bring in the jury, I'll proceed to give my final instructions to the jury, and we'll proceed with closing arguments from counsel.

I'd like to remind all of those present, particularly our guests in the gallery, that in the Court's view, its' final instructions to the jury and counsels' closing arguments are the most serious part of a very serious process.

I do not want shuffling of papers. I do not want whispering. I do not want noises. I do not want people

coming and going. I do not want any conduct that would detract from, interrupt, or lessen the attention of the jury on both the Court and counsel when they give their closing arguments. If there's anything any of you need to do, do it now so that when I come back in and we bring in the jury, I can have complete, unbroken attention of the jury on the process.

Is there anything from either Plaintiff or Defendant that needs to be raised with the Court before I recess at this time?

MR. EMERSON: I'd like to use the easel during my closing, sir.

THE COURT: All right. We'll talk about that in a minute.

Does Plaintiff have anything?

MR. DALTON: Nothing from Plaintiffs, Your Honor.

THE COURT: Tell me what your intention during closing with the easel is, Mr. Emerson.

MR. EMERSON: Put up some figures like I did in opening.

THE COURT: I'm not talking about what you're going to put on the easel. I'm talking about where you're going to put it -- where you're going to stand, how you're going to implement it.

MR. EMERSON: Same as I did before. I'd like to

have it right here so I can write right-handed.

THE COURT: All right. I'll permit that, with the following caveats: When you're standing there in front of the podium, you're going to have to be loud enough so that everybody hears you. We had a little bit of a problem with that earlier. So let me remind you to be vocal and loud so that everyone in the jury and in the courtroom can understand what you say.

Also, opposing counsel, if necessary, has the option during that time to move to the end of the jury box where they can stand and see what's on the easel so that they have a clear view on what opposing counsel does on the easel.

Further, when you've completed your use of the easel and the argument that you're presenting -- in your case, the Defendants will give one closing argument, you are to be sure that you take the easel, return it to the position that it's in now, and turn any pages that you've written on over the top of the easel so that they aren't shown and there's a clear sheet remaining on the front of the easel. Don't rip them off and crumple them up and do anything like that. Just gently lift them over the top of the easel and fold them back so they're not visible.

MR. EMERSON: I understand.

THE COURT: Any other questions?

MR. DALTON: No questions from Plaintiffs, Your Honor.

THE COURT: All right. Then the Court stands in recess.

COURT SECURITY OFFICER: All rise.

(Recess.)

COURT SECURITY OFFICER: All rise.

(Jury out.)

THE COURT: Be seated, please.

Ms. Denton, would you please bring in the jury?

COURT SECURITY OFFICER: All rise.

(Jury in.)

THE COURT: Please be seated.

I told you yesterday afternoon, ladies and gentlemen, this was not an exact science. I could have been a little closer on my best guess. I'm sorry you had to wait several hours, but I appreciate your patience in being here.

Ladies and gentlemen of the jury, you've now heard the evidence in this case, and I'll now instruct you on the law that you must apply.

Each of you are going to have your own hard copy, printed copy of these final jury instructions that I'm about to give you orally, therefore, there's really no need to take notes because you'll have your own hard copies, unless you just particularly want to take notes.

It's your duty to follow the law as I give it to you. On the other hand, ladies and gentlemen, and as I've previously said, you, the jury, are the sole judges of the facts in this case.

Do not consider any statement that I have made over the course of the trial or that I make during these instructions as an indication to you that I have any opinion about the facts in this case.

You're about to hear closing arguments from the attorneys for the parties. Statements and arguments of the attorneys, let me remind you, are not evidence. They are not instructions on the law either. They're intended only to assist the jury in understanding the evidence and the parties' contentions.

A verdict form has been prepared for you. You'll take this verdict form with you when you retire to the jury room. And when you have reached a unanimous decision as to the verdict, you will have your foreperson fill in the blanks in the verdict form reflecting your unanimous decisions, date the form, and sign it. Then advise the Court Security Officer that you have reached a verdict.

Answer each question in the verdict form from the facts as you find them to be. Do not decide who you think should win the case and then answer the questions to reach that result. Again, let me remind you, your answers and

your verdict in this case must be unanimous.

In determining whether any fact has been proven in this case, you may, unless otherwise instructed, consider the testimony of all the witnesses regardless of who may have called them. And you may consider the effect of all the exhibits received and admitted into evidence, regardless of who may have produced or presented those exhibits.

You, the jurors, are the sole judges of the credibility and believability of each and every witness and the weight and effect, if any, to be given to the evidence that's been presented in this case.

Also, as I've told you previously, the attorneys in this case are acting as advocates for their competing parties and their competing claims, and they have a duty to raise objections when they believe evidence is offered that should not be admitted under the rules of the Court.

When the Court sustained an objection to a question addressed to a witness, you are required to disregard the question entirely, and you may not draw any references from its wording or speculate about what the witness would have said if the Court had allowed them to answer the question.

On the other hand, if an objection to a question addressed to a witness was overruled, then you're to treat the answer and the question just as if no objection had been

made -- that is, like any other question and answer.

Now, at certain times during the course of the trial, it was necessary for the Court to talk to the lawyers either here at the bench outside of your hearing or when you were in the jury room and outside of the courtroom. This happens during the course of a trial because there are things that occur and that arise that don't always involve the jury.

You should not speculate, ladies and gentlemen, about what was said during those discussions that took place outside of your presence.

Now, there are two types of evidence that you may consider in properly finding the truth as to the facts in this case.

One is direct evidence, such as the testimony of an eyewitness.

The other is indirect or circumstantial evidence, which is the proof of a chain of circumstances that indicates the existence or non-existence of certain other facts.

As a general rule, you should know that the law makes no distinction between direct evidence and indirect evidence, but simply requires that you, as the jury, find the facts based on the evidence presented during the trial, both direct and circumstantial.

Now, the parties have agreed or stipulated to some facts in this case, and when lawyers for both sides stipulate as to the existence of a fact, you must, unless otherwise instructed, accept the stipulation as evidence and regard that fact as proven.

Also, certain testimony in this case has been presented to you through what are called depositions. A deposition is the sworn recorded answers to questions asked to a witness in advance of the trial.

If a witness cannot be present in person to testify, the witness's testimony may be presented under oath in the form of a deposition.

As I told you earlier, before the trial commences, the attorneys for both sides question and depose these witnesses under oath. At that time, when the deposition is taken, a court reporter is present, and the witness is sworn and placed under oath. They are asked questions, they give answers, and the questions and the answers are recorded.

You've seen deposition testimony presented to you in this case by way of video recordings, as well as through live readings of testimony by attorneys in the case.

Both of these forms of deposition testimony are entitled to the same consideration by you, the jury, as testimony given by a live witness present in the courtroom.

Accordingly, you should judge the credibility and

the believability and the importance of deposition testimony to the best of your ability, just as if the witness who appeared by deposition had appeared before you in open court and given their testimony from the witness stand.

Now, while you should consider only the evidence that's been produced in this case, you, ladies and gentlemen, should understand that you are permitted, as the jury, to draw such reasonable inferences from the testimony and the exhibits that you feel are justified in the light of common experience. In other words, ladies and gentlemen, you may make deductions and reach conclusions that reason and common sense leads you to draw from the facts that have been established by the testimony and evidence in this case.

However, you should not base your decisions on any evidence not presented by the parties in open court during the course of the trial, including your own personal experiences with any particular contracts.

Now, unless I instruct you otherwise, you may properly determine that the testimony of a single witness is sufficient to prove any fact, even if a greater number of witnesses may have testified to the contrary, if after considering all of the testimony and evidence you believe that single witness.

When knowledge of a technical subject may be helpful to the jury, a person who has special training and

experience in that technical field, called an expert witness, is permitted to state his or her opinions on those technical matters to the jury.

However, ladies and gentlemen, you're not required to accept those opinions. As with any other witness, it's solely up to you to decide who you believe and who you don't believe and whether or not you want to rely on their testimony.

Now, certain exhibits have been shown to you during the trial that were illustrations only. We call these type of exhibits demonstrative exhibits. Sometimes they're simply referred to as demonstratives.

Demonstrative exhibits are a party's description, picture, or model to describe something involved in the trial. If your recollection of the evidence differs from the demonstratives, ladies and gentlemen, then you should rely on your own recollection.

Demonstrative exhibits, you should understand, are not evidence. But the witness's testimony during which a demonstrative is used, that testimony is evidence.

Now, in any legal action, facts must be proved by a required amount of evidence known as the burden of proof. The burden of proof in this case is on the Plaintiffs for some issues, and it's on the Defendants for other issues.

There are two burdens of proof that you will apply

in this case, the preponderance of the evidence and clear and convincing evidence.

A preponderance of the evidence means evidence that persuades you that a claim is more probably true than not true. Sometimes this is talked about as being the greater weight and degree of credible testimony.

Clear and convincing evidence means evidence that produces in your mind an abiding conviction that the truth of the party's factual contentions are highly probable. Although proof to an absolute certainty is not required, the clear and convincing evidence standard requires a greater degree of persuasion than is necessary for the preponderance of the evidence standard.

If the proof establishes in your mind an abiding conviction in the truth of the matter, then the clear and convincing evidence standard has been met.

These standards, ladies and gentlemen, are different from what you may have learned about in criminal proceedings where a fact is to be proven beyond a reasonable doubt.

On a scale of the various standards of proof, as you move from a preponderance of the evidence on one end to beyond a reasonable doubt on the other end, where a fact must be proven with a high degree of certainty, you can think of the clear and convincing evidence standard as

between these two standards.

Now, in this case, every issue, except for one, is to be decided by the preponderance of the evidence standard. Therefore, unless I instruct you otherwise, the preponderance of the evidence standard is the standard you should apply.

I will make it clear in the verdict which standard should be applied to each question that you'll be asked to answer.

Now, in determining whether any fact has been proven by a preponderance of the evidence or by clear and convincing evidence, you may, unless otherwise instructed, consider the stipulations of the parties, the testimony of all the witnesses, regardless of who called them, and all the exhibits admitted into evidence by the Court and presented during the trial, regardless of who may have produced them.

Now, as I did at the start of the case, I'll first give you a summary of each side's contentions in this case, and then I'll provide you with detailed instructions on what each side must prove to win on each of its contentions.

As I told you at the beginning of the trial, the Plaintiffs in this case are Plastronics Socket Partners Limited and Plastronics H-Pin Limited. The parties and I may from time to time simply refer to Plastronics Socket

Partners Limited as Plastronics Socket Partners. You've sometimes heard this called PSP, or you've simply heard it called Plastronics Socket.

And you may hear Plastronics H-Pin Limited referred to as Plastronics H-Pin or even just simply H-Pin.

Plastronics Socket Partners Limited and Plastronics H-Pin Limited were formed by a divisive merger.

Under Texas law, a divisive merger is a process whereby one company splits into two. I'll refer to the original company that existed prior to this divisive merger simply as Plastronics.

The divisive merger whereby Plastronics split into Plastronics Socket Partners Limited and Plastronics H-Pin Limited occurred on December 31st, 2012.

The Defendants in this case are Dong Weon Hwang, also known as D.W. Hwang, also known as Dan Hwang, individually and doing business as HiCon Company, a sole proprietorship, and HiCon Company Limited, a Korean business entity.

As I instructed you at the beginning of the case, the DBA is Mr. Hwang engaging in business as his sole proprietorship.

When I refer to Mr. D.W. Hwang in these instructions, I'll refer to him as Mr. Hwang. And when I refer to his sole proprietorship, I'll refer to it as the

DBA. So if you hear DBA in these instructions, that refers to Mr. Hwang doing business as HiCon Company.

The parties and I may also refer to HiCon Company Limited, the Korean business entity, simply as HiCon Limited.

As I told you previously, this case involves allegations of patent infringement. And as I've already mentioned, there is one single United States patent at issue in this case, and it is United States Patent No. 7,025,602, which has been referred to throughout the trial, and I will refer to in these instructions, simply as the '602 patent.

Mr. Hwang is the inventor of the '602 patent and of Korean Patent No. 10-2004-0079649, which was filed October the 6th, 2004, and which I'll refer to as the Korean patent.

These patents cover the same invention. Plaintiffs contend that an Assignment Agreement between Mr. Hwang and Plastronics conveyed one-half of all the right, title, and interest in the U.S. patent to Plastronics.

Plaintiffs allege that as a part of the divisive merger, Plastronics H-Pin acquired and came into possession of Plastronics's rights to the '602 patent. However, the Defendants in this case dispute whether the Assignment Agreement is a valid contract.

Plastronics H-Pin alleges that HiCon Limited is infringing the '602 patent by making, using, selling, or offering to sell in the United States or importing into the United States a product meeting all the requirements of a claim of the '602 patent without authority or permission to do so.

Plastronics H-Pin also alleges that HiCon Limited is indirectly infringing the '602 patent by inducing other entities to infringe without authority or permission to do so.

The products that are alleged to infringe the '602 patent are the Hi-CONTACT pin, the Hs-CONTACT pin, and the Hr-CONTACT pin. These may be referred to collectively as the accused products.

HiCon Limited denies that it is infringing the '602 patent. HiCon Limited denies that it is selling the accused products in the United States or inducing other entities to infringe.

Instead, the Defendants in this case contend that the DBA sells the accused products into the United States and that because the DBA is Mr. Hwang's sole proprietorship, it enjoys the same rights as Mr. Hwang to sell the accused products in the United States and allow other companies to resell the products here.

Now, in most patent cases, ladies and gentlemen,

the parties dispute whether the accused products actually meet all of the elements or limitations of the claims within an asserted patent.

However, in this case, the parties have agreed and stipulated that the HiCon Hi-CONTACT, the Hs-CONTACT pin, and the Hr-CONTACT pin, the accused products, meet every element or limitation of Claim 1 of the '602 patent.

As a result, the only contested issues related to patent infringement are what person or entity, if any, makes, uses, sells, or offers to sell into the United States or imports into the United States the accused products and whether that person or entity or those entities are legally authorized to do so.

A patent owner has the right to stop others from using the invention covered by the patent claims in the United States -- in the United States during the life of the patent.

If any person makes, uses, sells, or offers to sell within the United States what is covered by the patent claim without the patent owner's permission, that person is said to infringe the patent.

Mr. Hwang and Plastronics H-Pin are both owners of the '602 patent. This means that both Mr. Hwang and Plastronics H-Pin have the right to make, use, sell, or offer to sell within the United States or import products

into the United States that are covered by the patent, and they cannot infringe the '602 patent.

Now, as I've said previously, the DBA is Mr. Hwang acting as a sole proprietorship known as HiCon. As such, the DBA is indistinguishable from Mr. Hwang and has all the rights as an owner of the '602 patent to make, use, sell, and offer to sell within the United States or import products into the United States that are covered by the patent, just the same as Mr. Hwang individually.

The rights to use an invention in a particular country are governed by that country's patent laws. Therefore, a person or entity is authorized to use a patent in one country. Even though they are authorized to use a patent in one country, that does not automatically mean that that person or entity is authorized to use the corresponding patent in another country.

A person can directly infringe a patent without knowledge or without knowing that what it is doing is an infringement of the patent. It may also directly infringe, even though in good faith it believes that what it is doing is not infringement of any patent.

In this case, Plastronics H-Pin Limited asserts that HiCon Limited has both directly and indirectly infringed the '602 patent. HiCon Limited is liable for directly infringing the '602 patent if you find that

Plastronics H-Pin has proven by a preponderance of the evidence that HiCon Limited made, used, imported, offered to sell, or sold the invention defined in at least one claim of the '602 patent in the United States without proper authority.

HiCon Limited claims that it does not make, use, sell, or offer to sell within the United States or import into the United States the accused products. If you find that HiCon Limited does not make, use, sell, or offer to sell within the United States or import into the United States the accused products, then you must find that HiCon Limited does not infringe the '602 patent.

Plastronics H-Pin Limited also alleges that HiCon Limited is liable for indirect infringement by inducing HiCon USA and/or HighRel to directly infringe the '602 patent.

HiCon Limited is liable for inducement of a claim only if Plastronics H-Pin Limited proves the following by a preponderance of the evidence:

(1) that the acts are actually carried out by HiCon USA and/or HighRel and directly infringe the '602 patent;

(2) that HiCon Limited took action during the time the '602 patent was in force intending to cause the infringing acts, if any, by HiCon USA and/or HighRel;

(3) that HiCon Limited was aware of the '602 patent and knew that the acts, if taken, would constitute infringement of that patent or that HiCon Limited believed that there was a high probability that the acts by HiCon USA and/or HighRel would infringe the '602 patent and HiCon Limited believed there was a high probability that the acts by HiCon USA and/or HighRel infringed the '602 patent and took deliberate steps to avoid learning of that infringement.

If you find that HiCon Limited was aware of the '602 patent but believed that the acts it encouraged, if any, did not infringe that patent, HiCon Limited cannot be liable for inducement.

In order to establish indirect infringement, it's not sufficient that HiCon USA and/or HighRel directly infringes the '602 patent. Nor is it sufficient that HiCon Limited was aware of the acts by HiCon USA and/or HighRel that allegedly constitute the direct infringement.

Rather, in order to find indirect infringement, you must find either that HiCon Limited specifically intended HiCon USA and/or HighRel to infringe the '602 patent or that HiCon Limited believed there was a high probability that HiCon USA and/or HighRel would infringe the '602 patent but deliberately avoided learning the infringing nature of HiCon USA and/or HighRel's acts.

The mere fact, if true, that HiCon Limited knew or should have known that there was a substantial risk that HiCon USA and/or HighRel's acts would infringe the '602 patent would not be sufficient for inducement of infringement.

HiCon Limited contends that it has not induced others to infringe the '602 patent.

Now, if any entity has authority to practice a patent, its sales of the accused products do not infringe on that patent, and any subsequent sales of those accused products also do not infringe the patent.

Mr. Hwang's DBA shares his rights to practice the '602 patent. However, the parties dispute whether HiCon Limited has authority to practice the '602 patent. And likewise, they dispute whether the DBA or HiCon Limited make or induce sales of the accused products in the United States.

In this case, Plastronics H-Pin Limited contends that HiCon Limited willfully infringed the '602 patent. If you determine that HiCon Limited has infringed, you must then address the additional issue of whether or not this infringement was willful.

Willfulness requires you to determine whether Plastronics H-Pin Limited proved by a preponderance of the evidence that the infringement by HiCon Limited was willful,

wanton, malicious, in bad faith, deliberate, consciously wrongful, flagrant, or characteristic of a pirate.

You may not determine that the infringement was willful just because HiCon Limited knew of the '602 patent and infringed it.

Instead, willful infringement is reserved only for the most egregious behavior, such as where the infringement is malicious, deliberate, consciously wrongful, or done in bad faith.

You may only find that HiCon Limited willfully infringed if you find that HiCon Limited acted egregiously, willfully, or wantonly.

You may find that HiCon Limited's actions were egregious, willful, or wanton if HiCon Limited acted in reckless or callous disregard of or with indifference to the rights of Plastronics H-Pin Limited.

I'll now instruct you about the measure of damages for patent infringement. If you find that HiCon Limited infringed the '602 patent, you must then consider what amount of damages to award to Plastronics H-Pin Limited.

Now, by instructing you on damages, ladies and gentlemen, I am not suggesting which party should win this case on any issue.

If you find that HiCon Limited has not infringed any valid claim of the patent-in-suit, then Plastronics

H-Pin Limited is not entitled to any damages.

These instructions on damages relate only to Plastronics H-Pin's claims for patent infringement.

I will instruct you separately and later on regarding the appropriate measure of damages for the parties' other claims.

If you award damages, they must be adequate to compensate Plastronics H-Pin for any infringement of the '602 patent that you may find.

You must not award Plastronics H-Pin more damages than are adequate to compensate for the infringement, nor should you include any additional amount for the purpose of punishing HiCon Limited.

Damages are not meant to punish an infringer. Your damages award, if you reach this issue, should put Plastronics H-Pin in approximately the same financial position that it would have been in had the infringement not occurred.

Plastronics H-Pin has the burden to establish the amount of its damages by a preponderance of the evidence. In other words, you should award only those damages that H-Pin establishes that it more likely than not suffered as a result of HiCon Limited's infringement of the '602 patent.

While Plastronics H-Pin is not required to prove the amount of its damages with mathematical precision, it

must prove them with reasonable certainty.

H-Pin is not entitled to damages that are remote or speculative. The patent laws specifically provide that damages for infringement may not be less than a reasonable royalty.

Plastronics H-Pin is not entitled to recover damages for sales of the accused products that occurred outside of the United States of America.

There are different types of damages that Plastronics H-Pin Limited may be entitled to recover. In this case, Plastronics H-Pin seeks to recover lost profits or a reasonable royalty.

Lost profits consist of any actual reduction in business profits Plastronics H-Pin Limited suffered as a result of HiCon Limited's or HiCon Company's infringement.

A reasonable royalty is defined as the amount of money Plastronics H-Pin Limited and HiCon Limited or HiCon Company would have agreed upon as a fee for the use of the invention at the time prior to when infringement began.

But regardless of the type of damages that you may choose to award, you must be careful to ensure that the award is no more than needed to fully compensate the party whose patent rights are infringed.

I'll give you more detailed instructions regarding damages shortly. You should note, however, that Plastronics

H-Pin Limited is entitled to recover no less than a reasonable royalty for each infringing sale.

In this case, Plastronics H-Pin Limited seeks to recover lost profits for some of HiCon Limited's sales of the Hi-CONTACT pin, the Hs-CONTACT pin, and the Hr-CONTACT pin related to acts of infringement in the United States and a reasonable royalty on the rest of HiCon Limited's sales related to acts of infringement in the United States.

To recover lost profits, as opposed to reasonable royalties, Plastronics H-Pin Limited must show a causal relationship between the -- the infringement and Plastronics H-Pin Limited's loss of profit. In other words, Plastronics H-Pin must show that but-for the infringement, there's a reasonable probability that Plastronics H-Pin would have earned higher profits.

To show this, Plastronics H-Pin Limited must prove that. If there had been no infringement, it would have made some portion of the sales that HiCon Limited made of the infringing product.

In considering what Plastronics H-Pin Limited would have earned, you should only consider the sales of H-Pins. You should not take into account any profits of Plastronics Socket Partners Limited or any sales of sockets.

Plastronics H-Pin is entitled to lost profits if it establishes each of the following:

(1) that there was a demand for the patented device;

(2) that there were no available, acceptable, non-infringing substitute products;

(3) that Plastronics H-Pin Limited had the manufacturing and marketing capacity to make any infringing sales actually made by HiCon Limited and for which Plastronics H-Pin Limited seeks an award of lost profits. In other words, that Plastronics H-Pin Limited was capable of satisfying the demand;

(4) the amount of profit that Plastronics H-Pin Limited would have made if HiCon Limited had not infringed.

Demand for the patented product can be proven by significant sales of the patentholder's patented product or significant sales of an infringing product containing the patented features.

To be an acceptable, non-infringing substitute, a product must have had one or more of the advantages of the patented invention that were important to people who purchased an alleged infringer's product, not the public in general.

If purchasers of an alleged infringer's product were motivated to buy that product because of features available only from that product and a patentholder's patented product, then some other alternative product is not

an acceptable substitute, even if it otherwise competed with the patentholder's and an alleged infringer's products.

On the other hand, if the realities of the marketplace are that the competitors other than the patentee would likely have captured the sales made by the infringer despite a difference in the products, then the patentee is not entitled to lost profits on those sales.

An alternative product may be considered available as a potential substitute even if the product was not actually on sale during the infringement period. Factors suggesting the alternative was available include whether the material, experience, and know-how for the alleged substitute were readily available at the time of the infringement.

Factors suggesting the alternative was not available include whether the material was of such high cost as to render the alternative unavailable and whether an alleged infringer had to design or invent around the patented technology to develop an alleged substitute.

A patentholder is only entitled to lost profits for sales it could have actually made. In other words, Plastronics H-Pin Limited must show that it had the -- that it had the manufacturing and marketing capability to make the sales that it said it lost. This means Plastronics H-Pin Limited must prove that it's more probable than not

that it could have made and sold or could have had someone else make or sell for it the additional products it says it could have sold but-for the infringement.

A patentholder may calculate its lost profits on lost sales by computing the lost revenue for sales it claims it would have made but-for the infringement and subtracting from that figure the amount of additional costs or expenses it would have incurred in making those lost sales, such as cost of goods, sales costs, packaging costs, and shipping costs.

Certain fixed costs that do not vary with increases in production or scale, such as taxes, insurance, rent, and administrative overhead, should not be subtracted from a patentholder's lost revenue.

Now, what I've just instructed you on is the method for determining whether Plastronics H-Pin is entitled to lost profits as a measure of damages for patent infringement.

If you find that Plastronics H-Pin Limited has established infringement, Plastronics H-Pin Limited is entitled to at least a reasonable royalty to compensate it for that infringement.

If you find that Plastronics H-Pin Limited has not proved its claim for lost profits or has proved its claim for lost -- lost profits for only a portion of those

infringing sales, then you must award Plastronics H-Pin Limited a reasonable royalty for all infringing sales for which it has not been awarded lost profits damages.

A royalty is a payment made to a patentholder in exchange for the right to make, use, or sell the claimed invention. A reasonable royalty is the amount of royalty payment that a patentholder and the alleged infringer would have agreed to in a hypothetical negotiation taking place at a time prior to when the infringement first began.

In considering this hypothetical negotiation, you should focus on what the expectations of the patentholder and the alleged -- the alleged infringer would have been had they entered into an agreement at that time and had they acted reasonably in their negotiations.

In determining this, you must assume that both parties believe the patent was valid and infringed and that both parties were willing to enter into an agreement.

The reasonable royalty you determine must be a royalty that would have resulted from the hypothetical negotiation and not simply a royalty that either party would have preferred.

Evidence of things that happened after the infringement first began can be considered in evaluating the reasonable royalty only to the extent that the evidence aids in assessing what royalty would have resulted from a

hypothetical negotiation.

Although evidence of the actual profits an alleged infringer made may be used to determine the anticipated profits at the time of the hypothetical negotiation, the royalty may not be limited or increased based on the actual profits the alleged infringer made.

Do not include any damages related to infringement prior to December the 31st, 2012, the date that H-Pin became the owner of the '602 patent.

The parties have also asserted, ladies and gentlemen, breach of contract claims against each other.

I'll now instruct you on the law relevant to these breach of contract claims.

In order to determine whether any party has breached a contractual obligation, you'll be called upon to answer several questions.

First, whether a valid and enforceable contractual obligation existed.

Second, whether any party violated any of its contractual obligations.

Third, if any party violated any of its obligations, whether there is a defense for that violation.

Now, as you've heard, there are two contracts at issue between the parties in this case, a Royalty Agreement and an Assignment Agreement.

Generally speaking, the Assignment Agreement grants both Mr. Hwang and Plastronics a 50 percent ownership interest in the invention disclosed in the '602 patent.

The Royalty Agreement requires Mr. Hwang and Plastronics to make certain royalty payments to one another under certain conditions if products embodying the -- the invention are sold.

Plastronics H-Pin Limited contends that Mr. Hwang breached the Royalty Agreement by licensing the H-Pin invention disclosed in the '602 patent or its Korean counterpart patent without the consent of Plastronics H-Pin Limited and Plastronics Socket Partners Limited.

Plastronics H-Pin Limited also contends that Mr. Hwang breached the Assignment Agreement by licensing or transferring an interest in the '602 patent without the consent of Plastronics H-Pin Limited and Plastronics Socket Partners Limited and failing to provide an accounting of his sales.

Mr. Hwang denies these allegations and claims that Plastronics fraudulently induced him to enter into the Royalty Agreement and the Assign -- and the Assignment Agreement and that those agreements are not valid and enforceable for that reason.

Mr. Hwang also contends that Plastronics H-Pin Limited has breached the Royalty Agreement by failing to pay

royalties to Mr. Hwang and breached the Assignment Agreement by failing to provide an accounting.

To show fraudulent inducement, Mr. Hwang must show three things.

First, that Plastronics made a false statement of material fact, knowing that the statement was false, or that Plastronics made a promise with no intent to keep that promise.

Second, that Plastronics intended for Mr. Hwang to act on that false statement or promise.

And, third, that Mr. Hwang did, in fact, rely on that false statement or promise to his detriment.

In considering whether Mr. Hwang complied with the Royalty Agreement and the Assignment Agreement, you must first decide the scope of the parties' agreements, if any.

The parties disagree on the meaning of certain terms in the two agreements. I have determined the meaning of some of these terms, and I will instruct you as to their meaning.

However, there are a few terms in these contracts that I have found to be ambiguous. Therefore, if you decide that either or both of these contracts are valid and enforceable, then it will be your job to determine what these ambiguous terms mean.

The first of these ambiguous terms is the term

"H-Pin Project," which is used in the Royalty Agreement. You'll be asked to decide whether the term "H-Pin Project" includes any rights and interests in the Korean patent.

Similarly, you're going to be asked to construe the phrase "throughout the world," which is used in the Assignment Agreement. And you're going to be asked to determine whether the phrase "throughout the world" was intended to include or exclude South Korea.

You'll also be asked to construe the terms "third party" and "another entity" which are used in the Royalty Agreement. You'll be asked to determine whether the terms "third party" and "another entity" mean any entity that is not a party to the Royalty Agreement or whether they were intended to exclude entities controlled by the parties to the agreement, such as HiCon Limited which is controlled by Mr. Hwang.

In determining the meaning of these terms, you should do your best to give them the meaning the parties intended them to have at the time they entered into these contracts, taking into account the business purposes of the contracts.

You should consider each contract in the light of the other. In determining what the parties intended, you should consider the facts and circumstance -- circumstances surrounding the execution of both the Royalty and Assignment

Agreement's execution together.

You may consider what the parties said and did while forming the contract in light of the surrounding circumstances, including any earlier course of dealing. You may not consider the parties' unexpressed thoughts or intentions.

However, before you determine the meaning of any term, you must first determine whether any of these contracts are valid and enforceable. And by instructing you on how to determine the meaning of the terms, you should not assume that I have any opinion one way or the other as to whether these contracts are valid and enforceable. That, ladies and gentlemen, is your issue to decide.

Now, as I mentioned before, I've construed some disputed terms in these contracts as a matter of law. You're to accept these interpretations as I give them to you and apply them in determining whether a breach of these contracts has occurred.

Paragraph 3 of the Royalty Agreement states: PSP current handbook policy is to pay 3 percent of gross sales on inventions that are patentable by persons employed at PSP after all non-reoccurring capital costs, which include stamping tools, tooling equipment, assembly equipment, test equipment, and patent costs. This term requires a royalty payment of 3 percent of gross revenues from the sale of

H-Pins after non-reoccurring capital costs have been deducted from those gross revenues.

Royalties are not paid on a percentage of profits but on gross sales. Royalties are to be paid when the gross sales exceed the structured debt service payment attributable to the non-reoccurring capital costs. Royalties on gross sales may not be withheld simply because the entirety of the non-reoccurring capital costs have not been fully discharged.

Additionally, Paragraph 6 of the Assignment Agreement states that both -- that both Mr. Hwang and Plastronics, now Plastronics H-Pins, shall be entitled to accounting for any revenue received and for profits, if any, made from the invention.

Based on the agreement of the -- of the parties, I instruct you that this term requires each party to provide an accounting only when that party also owes royalties to the other party under the terms of the Royalty Agreement.

Now, if you find that Mr. Hwang breached the Assignment Agreement, you must also decide whether Mr. Hwang's failure or failures to comply, if any, are excused by Plastronics or Plastronics H-Pin's previous breach of the Assignment Agreement.

A prior breach of the Assignment Agreement by Plastronics or Plastronics H-Pin only excuses Mr. Hwang's

subsequent breach if Plastronics or Plastronics H-Pin's prior breach was material.

The circumstances to consider in determining whether a breach is material include:

(1) the extent to which the injured party will be deprived of the benefit which he reasonably expected;

(2) the extent to which the injured party can be adequately compensated for the part of that benefit of which he will be deprived;

(3) the extent to which the party failing to perform or to offer to perform will suffer forfeiture;

(4) the likelihood that the party failing to perform or to offer to perform will cure his failure taking into account circumstances, including any reasonable assurances;

(5) the extent to which the behavior of the party failing to perform or to offer to perform comports with standards of good faith and fair dealing.

You must also decide whether Mr. Hwang has shown by a preponderance of the evidence that Plastronics H-Pin failed to comply with the Royalty Agreement by failing to pay royalties and whether Plastronics H-Pin failed to comply with the Assignment Agreement by failing to render an accounting.

If you find that Mr. Hwang failed to comply with

his agreements and that his failures were not excused, you should then determine whether Plastronics H-Pin Limited sustained any damages resulting from Mr. Hwang's failure to comply.

Likewise, if you find that Plastronics H-Pin breached its agreements to Mr. Hwang, then you should consider what damages, if any, Mr. Hwang sustained from that breach.

You may find only those damages necessary to put the injured party in the same economic position it would have been in had the breaching party performed the contract.

In this case, Plastronics H-Pin Limited seeks to recover lost net profits sustained in the past.

Net profits means the amount by which Plastronics H-Pin's gross revenues would exceed all of the costs and expenses that would be necessary to produce those revenues.

Lost past net profits are not recoverable unless Plastronics -- Plastronics H-Pin Limited proves that the lost past net profits were a natural, probable, and foreseeable consequence of the breach of contract.

If the lost net profits are not proven with reasonable certainty but are merely speculative, you may not award lost past net profits.

If you find that Plastronics H-Pin breached its agreements to Mr. Hwang, then you should consider what sum

of money, if any, if now paid in cash would fairly and reasonably compensate Mr. Hwang for -- for Plastronics H-Pins's breach.

In determining the damages to award for Mr. Hwang, you should consider what Plastronics agreed to pay but has not paid to Mr. Hwang.

As to the Assignment Agreement, if you find a breach of that agreement occurred before January the 19th, 2014, then you should not award any damages for breach of the Assignment Agreement. Only award damages for breach of the Assignment Agreement that occurred after January the 19th, 2014.

However, as to the Royalty Agreement, damages for failure to make periodic royalty payments should be made where such periodic payment was called for and due after January the 19th, 2014.

You should not award damages for any unpaid periodic royalty payment originally called for and due before January the 19th, 2014.

Do not add any amount for interest to damages you award, if any.

I'll now instruct you on the law relevant to Plastronics Socket Partners's tortious interference and conspiracy claims.

Plastronics Socket Partners claims that HiCon

Limited tortiously interfered with prospective business relationships with electrical suppliers and/or manufacturers.

You may find that HiCon Limited tortiously interfered with Plastronics Socket Partners's prospective business relations if you determine that:

(1) there was a reasonable probability that Plastronics Socket Partners would have entered into a business relationship;

(2) HiCon Limited committed an independently tortious or unlawful act that was a substantial factor in preventing the contractual or business relationship from occurring;

(3) HiCon Limited acted with a conscious desire to prevent the relationship from occurring or knew the interference was certain or substantially certain to occur as a result of this conduct;

And (4), the interference proximately caused injury to Plastronics Socket Partners;

And (5), Plastronics Socket Partners suffered actual harm or damage as a result of the interference.

Now, as I just mentioned, tortious interference requires that HiCon Limited committed an independently tortious or unlawful act. An independently tortious or unlawful act is a wrongful act that would itself be

separately actionable.

If you find that Plastronics Socket Partners has proved its claim for tortious interference with prospective relationship against HiCon Limited, then you'll need to decide what sum of money, if any, paid now in cash would fairly and reasonably compensate Plastronics Socket Partners for its damages, which are proximately caused by such interference. Do not add any amount for interest on damages, if any.

Damages may include the loss of benefits or consequential losses, including lost profits, resulting from Defendants' interference with a prospective contractual relationship.

Plastronics Socket Partners claims that Mr. Hwang, HiCon Limited, HiCon USA, and/or HighRel, conspired to tortiously interfere with Plastronics Socket Partners Limited and Plastronics H-Pin Limited's prospective business relations.

To be part of a conspiracy, one person and another person or persons must have had knowledge of, agreed to, and intended a common course of action that resulted in the damages to Plastronics Socket Partners. One or more persons involved in the conspiracy must have performed some act or acts to further the conspiracy.

It's not enough for Plastronics Socket Partners to

show that a person engaged in conduct that resulted in an injury. Rather, the purpose of the conspiracy must be to cause injury.

Plastronics Socket Partners seeks exemplary damages from Mr. Hwang and HiCon Limited. Exemplary damages, ladies and gentlemen, means an amount that you may, in your discretion, award as a penalty or by way of punishment.

You may only award exemplary damages against HiCon Limited if you find that HiCon Limited acted with actual malice.

Similarly, you may only award exemplary damages against Mr. Hwang if you find that Mr. Hwang acted with actual malice.

Actual malice means a specific intent to cause substantial injury to Plastronics Socket Partners. Plastronics Socket Partners must prove malice by clear and convincing evidence.

If you find by clear and convincing evidence that HiCon Limited or Mr. Hwang acted with actual malice, then you'll need to consider whether Plastronics Socket Partners should be awarded exemplary damages to punish HiCon Limited or to punish Mr. Hwang.

Factors to consider in awarding exemplary damages, if any, are:

(A) the nature of the wrong;

(2) the character of the conduct involved;

(3) the degree of culpability of HiCon Limited or Mr. Hwang;

(4) the situation and sensibilities of the parties concerned;

(5) the extent to which such conduct offends a public sense of justice and propriety;

And, 6, the net worth of Defendants.

Now, ladies and gentlemen with those instructions from the Court, we're ready to hear closing arguments from the attorneys for the parties in this case.

Mr. Dalton, you may present the Plaintiffs' first closing argument.

MR. DALTON: May it please the Court, Your Honor.

THE COURT: Would you like a warning on your time, sir?

MR. DALTON: 10-minute warning, please, Your Honor.

THE COURT: When 10 minutes have been used or when 10 minutes are remaining?

MR. DALTON: 10 minutes remaining, Your Honor.

THE COURT: Out of your total?

MR. DALTON: Yes, sir.

THE COURT: I'll warn you when you have 10 minutes

remaining.

You may proceed with closing argument.

MR. DALTON: Good afternoon. We're at the point of this trial where in a little while you're going to have to go back into the jury room and we're going to give this case to you and you're going to have to deliberate on this case.

There's going to be two jobs that you're going to have back there. The first job is going to be to answer the Judge's questions that he's going to give you. They're going to be on -- a stack of papers right here.

The second job you're going to have is to tell other jurors why you want to answer the way you want to answer. And so with that in mind, I want to give you some ways in which you can do that.

I don't have a lot of time, so we've got a lot of questions to go through. So I'm going to call out some exhibit numbers. And if you want to write those down, all these exhibits are going to be there for you in the jury room. So if there's something that I'm speeding through and you want to look at, just write it down and you can check it -- check me on it when you get back into the -- the jury room.

The first thing that you're going to notice on these questionnaires is it's the burden of proof. It's --

we have to prove our case by a preponderance of the evidence.

Judge Gilstrap, at the opening of the trial, told you about the Lady Justice over there and how the balanced scales, that it's a tight -- just a slight tip in the favor, then that's -- that meets the burden of preponderance of the evidence.

You could look at it also like a football field. There's the 50-yard line, and we get the -- the nub of the football over that 50-yard line, that means we met our burden of proof. And so that's -- that's what you have -- when you consider this case, that's the burden of proof that you have to consider.

A lot of these questions in here can resolve themselves when we look behind the curtain of Mr. Hwang's DBA. The purpose -- you know, we know that the purpose of this DBA is to get around his obligations to Plastronics and try to get around Plastronics's patent rights here in the United States.

They're trying to convince you that some sale occurred between Mr. Hwang and himself. And, you know, where there's no piece of paper or there's no evidence of any funds going back and forth or even any movement of products. They're trying to do that because they can prove that to you or show you that or just convince you, then they

get away with what they're trying to pull off here against Plastronics.

First things we should do is just talk about HiCon. It's a shell company. It has no assets. The only person in this thing is Mr. Hwang. He -- he keeps -- he has the same address as HiCon Company Limited. It's got the same email address, the same contact information. Everything is the same for HiCon Company, the DBA.

When -- they wanted you to think that there were legitimate transactions going on between Mr. Hwang and himself. Their neutral witness to this was -- was a Mr. Schubring. As you remember, he was on the stand yesterday. This was the guy that -- he's neutral and he's going to tell you, yeah, this is -- I'm getting these from Mr. Hwang's DBA.

So what did we learn about this neutral witness yesterday? Well, we learned that he came out to Marshall with Mr. Hwang and his lawyers, and he's been there since Friday.

We learned that he was prepared for his testimony by Mr. Hwang's lawyers.

We learned that when the question was asked, he referred to Mr. Hwang's lawyers as his lawyers.

And we also learned that his very success as a business person is tied to Mr. Hwang's success.

And as a matter of fact, he's in the audience today. He's -- he's there. He's sitting behind Mr. Hwang just making sure that whatever he's pulling off here, that if this thing goes through, because he's hitched to this guy's wagon.

If Mr. Hwang really wanted to give you the truth of who is selling products in the United States, they would have brought a neutral witness in here. They would have brought somebody from Micron or ON Semi or some of these other big computer chip manufacturers that we've been talking about here.

And I can guarantee you, if they brought somebody in from Micron and they asked, if you think -- do you think you're buying products from Dong Hwang's DBA, HiCon Company, they'd be scratching their head. They wouldn't know what you're talking about. And if there was some problem that Micron was having with some of these pins and sockets, you better believe that they're going to be calling HiCon Company Ltd. to try to get somebody on the phone. And they're not going to be chasing down Mr. Hwang on a cell phone on the golf course. It just doesn't make sense.

But let's go through what Mr. Schubring showed us yesterday.

This is PX-043.

Can y'all see that?

Here's the Distribution Agreement that they say proves that sales were made. We've got HiCon. No differentiation between Ltd. or HiCon, the DBA.

It says: A duly organized company under the laws of South Korea.

Here on the witness list, HiCon has been in the business of developing, manufacturing, and selling throughout the world. Well, we know there's only one manufacturer, and it's HiCon Limited.

When we go to the signature page, again, we have Mr. Hwang and his title, the president and CEO.

You can go to Exhibits PX-44, PX-48, and those are the business registrations of the sole proprietorship, the DBA, and HiCon Limited. And you can look for yourself which one names himself as a president, and that's HiCon Company Limited.

Then they showed you an email that came from an employee of Plas -- of HiCon Limited, J.B. Hwang. I think that's Mr. Hwang's son. And Mr. Hwang was also copied on this. And this was -- they said the email from Mr. J.B. Hwang saying that we're going to change the name of the -- on this Distribution Agreement from HiCon Company Limited to the -- the DBA.

But interestingly, the Defendants didn't tell you about this line at the bottom. It says: This is just for

the name on the document that shows on PO.

Didn't say the real seller of this thing and the real shipper of this thing is this -- the DBA. It says this is just the name.

Now, they left that lingering out there to give you the impression that this thing was legitimate. But they didn't call in J.B. Hwang to explain what he meant by that, and you have to ask yourself why they didn't do that.

Also through Mr. Schubring, they tried to show us these invoices to say that this is -- everybody knows that HiCon Company is sending these things and not HiCon Company Limited. Well, of course, it's a -- this is an invoice from the vague HiCon to HiCon USA to Mr. Schubring.

The first hurdle you're going to have to overcome if you think this is legitimate, is you're going to have to believe that Mr. Hwang was typing this thing out on his computer because he's the only employee of -- of the DBA.

And if you think that the guy who -- he says he's so busy as an engineer that he doesn't know what he pays himself is out here typing these things out on a computer, then I think he's pulled one over on all of us.

In the left-hand corner, we see these -- maker, HiCon Company Limited. We see HiCon Korea -- differentiating between the two. But let's look at a -- another invoice to another person.

Here's the same invoice to somebody here in the United States in San Jose. This is D -- DX-47. The other one I showed you was DX-285.

Well, look at the left-hand corner down here. Where are those -- where does it make the differentiation between HiCon Limited and HiCon? Doesn't exist.

If you look at this, you have no idea who it comes from. It just says HiCon. It doesn't differentiate between HiCon Company Limited. It doesn't differentiate between the DBA. Here again, they're trying to fool people here.

And really the -- the bigger issue in all of this is that even if these invoices -- they don't prove a thing. There's no proof of sale from HiCon Company Limited to the DBA. And there's no proof of any payment made from the DBA to HiCon Company Limited.

And you have to ask yourself is why is this so difficult to show? If I told you that I went down to the coffee shop this morning and I got a cup of coffee and I -- and I wanted to show it to you, I would show you the receipt. And it would say, yeah, he bought a cup of coffee for two bucks down there. I wouldn't show you 10 years of tax records to prove up that I went down to the coffee shop and I bought something.

So then we go behind this scheme that Mr. Hwang has put together, and this is DX-140. And you'll notice I'm

using a lot of Defendants' exhibits here, and it's rare that I'm able to use Defendants' exhibits in my closing argument.

So DX-140 is the supply agreement that Mr. Hwang made with himself. So it's between HiCon and HiCon Company Limited, signed by Mr. Hwang on behalf of HiCon Company Limited and signed by Mr. Hwang in his individual capacity.

So if we look down to Article 4, Order and Supply, this is -- this is how Mr. Hwang arranged with himself how he was going to do this.

No. 1: To facilitate promptness and convenience, we're not -- we're not going to have any receipts. It's not going to happen. We're just going to -- you know, I'm going to tell myself that I don't need to give myself any paperwork for this.

Section 2: I'm not going to supply any supply certificates, which all of this is standard in this industry. They've shown you -- they've tried to bring reams and reams of these things, invoices to places outside the country, outside of the United States, but they can't do it -- can't show the one that really matters, which is between HiCon Company Limited and the DBA. It doesn't exist. They can't show it to you.

So without that, they -- they move to, well, let's show you some of these tax invoices from -- from Korea. That proves that these sales were made.

So let's look at a legitimate -- so we learned from Mr. Hwang that's in Korea that if somebody sells something to somebody -- another business in Korea, that they charge a 10 percent tax on the product. And that's called VAT.

So here's -- here's a -- this is one of these tax invoices from HiCon Company Limited to -- called standard CWP at Korea.

So here in this example, we've got an item -- very particular part number, test socket. Under standard, it's got a serial number, it's got a quantity. It's got a unit price, a value of supply, which says 2,580,000 Won. And there's a VAT of 258,000, which is 10 percent.

So this is a legitimate transaction between one Korean company to the other.

So then we'll move to what Defendants put in front of us to try to prove this. They -- this is DX-282.

So here's the tax invoice of HiCon Company Limited to HiCon, the DBA. The address is the same. The email -- the person at HiCon Company Limited, she emails it to herself. The product doesn't have any markings on it, doesn't say what product -- what it was. It just says: Socket. Doesn't have any specifications what it is like the other example. You have one quantity and unit price on it is 45 million Won. So that's a -- that's a very expensive

socket, if you -- if you haven't determined that by now which you've heard from this.

And what is the tax amount? It's zero. So this is supposedly a legitimate transaction between a Korean business to another Korean business, but they don't take the taxes out.

So Mr. Hwang tells us that, well, no, no, this was meant for export. This is why there's no zero taxes, that if -- if somebody -- if a company sends something overseas, then they don't charge that customer overseas a 10 percent tax.

So what this really means is that HiCon Company Limited is the exporter because they're not -- if it's a legitimate transaction, the receiving company, they're going to have -- if they're a Korean company, they're going to have to pay that tax. It's only when they ship that out.

So by HiCon Company Limited doing that, they are admitting that they are the exporter of these goods. It's the only way they get to take that deduction, if they are the exporter.

And if you -- you're having any reservations about HiCon Company Limited being the exporter of these goods, this was an exhibit that came a couple days ago. And this is marketing materials that HiCon Company Limited sends out to -- it's in English. They send it out to the United

States.

And you'll see the top left, HiCon Company Limited tells a little bit about themselves. Here at the bottom, it says: Won $20 million exporter's award on 53 Trade day. That's a -- that's a trophy that was given out to HiCon Company Limited for exporting.

When I asked Mr. Hwang what this was, he said, well, it was an award for -- for -- I think he said combined exports or something like that, like assuming that both this was, you know -- it was for the -- I think he called it indirect, that's right. He said this is indirect exporting, meaning that it was his DBA.

My Korean is not the best, but I can guarantee you that that doesn't say 20 -- HiCon Ltd. $20 million worth of exports through Dong Weon Hwang's DBA, HiCon Company.

So when you're thinking about this, just think about this trophy, and you'll know who's really shipping these goods to the United States.

So here's the first question that's going to be posed to you by Judge Gilstrap that you're going to have on the -- the verdict form.

It says: Did Plastronics H-Pin prove by a preponderance of the evidence that HiCon Limited directly infringed or induced infringement of Claim 1 of the '602 patent?

This is basically saying that -- is HiCon Company Limited sending these H-Pins into the United States or are they inducing people to do it, helping people to do, assisting people to do it?

I say that we've met our burden. We've gotten the football over the 50-yard line. I would urge you to answer yes to this.

Second question for you is: Did Plastronics H-Pin prove by a preponderance of the evidence that the infringing conduct of HiCon Limited was willful?

For you to consider that, I'm going to show you a couple of exhibits here.

We've got PX-245. This is from Mr. Hwang to Mr. Schubring when they were negotiating the -- the HiCon USA Distribution Agreement. Questions came up about patent issues that might arise -- shipping products in the U.S. infringe upon Plastronics's patent here.

Well, Mr. Hwang just says: Hey, one thing. If HighRel get legal/patent issue from competitors in the U.S., who will care? Well, he's got one competitor in the U.S., and it's Plastronics.

Then after this lawsuit was filed, HiCon Company Limited and HiCon USA were going to go to a show, and they were going to show some of the H-Pins here in the United States.

So here we have an employee, Mr. Hwang -- I think this is another one of Mr. Hwang's sons who is an employee -- sending this to Mr. Schubring, telling him: We must be careful because anything we have in the booth can be evidence against us. And if we lose the lawsuit, evidence is showing international breaking of a contract can increase compensatory payment to three times larger. Please do not show any pictures of the H-Pin or Hr products.

So they knew once they got to the United States what they were doing was bad, and they continued to do it. And that shows willfulness. And it shows it right here. I don't have to convince you. You can look for yourself in this exhibit.

Third question to you is: What sum of money, paid in cash today, would reasonably compensate Plastronics H-Pin for HiCon Limited's infringement up to the time of trial?

I would ask you to give Mr. Perry, our expert's, number. 2,575,388 was the figure that Mr. Perry gave you.

Fourth question to you is a claim that Mr. Hwang has against Plastronics: Did Mr. Hwang prove by a preponderance of the evidence that Plastronics H-Pin breached the Assignment Agreement?

The provision that Mr. Hwang is suing us over is a provision that we have to -- Plastronics has to provide an accounting to them. And as Judge Gilstrap instructed you,

and you'll be -- have your jury instructions, a breach would have to be material, which means it has to be important, has to be essential to the agreement. You can't just pick something out and say you breached it, so that's fine.

So this provision was not material, and there was really no reason for it because neither side gave each other an accounting. So I'd ask you to answer no on this.

Mr. Hwang never presented any evidence of how he could be compensated money for not getting a royalty agreement. We had their -- their expert on there, never gave an opinion about this. And I think the only fair return is to say that this is worth zero dollars because he hasn't shown any harm to it.

Question No. 6: Did Mr. Hwang prove by a preponderance of the evidence that Plastronics H-Pin breached the Royalty Agreement?

This has to do with the reoccurring capital cost provision. We've had Mr. Pfaff, we've had Mr. Furman telling y'all about what it took to get this thing to market, to take this idea that Mr. Hwang had and to actually make it into a product. They kind of came and had these big models of snapping it together and look how easy this is. But you've got to -- you've got to realize that this is -- these things are as thin as a human hair, so you can imagine what -- what -- you know, building machines from scratch

that are going to be able to assemble those things, piece them together, that costs a lot of money.

Now, their expert said, well, you know, there might have been something, but he couldn't really determine what -- what that would actually be.

Now, our -- our expert -- he actually did the -- did the analysis. He looked at all the costs. It says that Plastronics is $20,000.00 in the hole on this. So I'd answer no.

Since Mr. Hwang -- there was no breach, you're going to answer no to this. No money.

Next question for you: Plastronics H-Pin prove by a preponderance of the evidence that Mr. Hwang breached the Royalty Agreement?

These are -- these are a fairly easy exercise for you. I'm going to put out PX-30.

No. 5: Licensing the H-Pin Project patent rights: Neither PSP or Hwang can grant a license for the patent covering the H-Pin Project without the approval from the other party.

This is PX-300. This is the licensing agreement between Mr. Hwang and HiCon Company Limited, the very thing that was prohibited on the contract.

If there's any question about what was meant -- what the H-Pin Project was, all you have to do is look at

the agreement. The agreement says that it's -- the H-Pin Project is defined as the -- the invention, the Korean patent. It's up in the top. You can read it for yourself. It's referenced there.

PX-16 is the Assignment Agreement. This is between Mr. Hwang and Plastronics. Both agree that they're not going to license the invention and said application, which this is -- this is the U.S. application, but the invention disclosed in said application was the Korean patent. That's what was agreed to. Look at the licensing agreement. It's exactly what Mr. Hwang did. He licensed that application -- the invention in that application, to a third party, which is prohibited under the contract.

Now, there's going to be a question about what a third party meant under the agreement or whether it was restricted worldwide, what the parties meant by all this. I think you only have to consider why -- you know, the motive behind Mr. Pfaff wanting that language in there is to stop exactly what's going on here today, that he would have Mr. Hwang learn all the manufacturing processes, learn the customers, learn everything, and take all that knowledge back to Korea, start his own company, and start flooding the market here in the U.S. with cheaper H-Pins. It's exactly what Mr. Pfaff was trying to prohibit.

To this day, this trial is exactly what he was

trying to prohibit by having that language in there.

No. 9: Did Mr. Hwang prove by a preponderance of the evidence that Plastronics fraudulently induced Mr. Hwang into entering into the Royalty Agreement?

This question is the -- the theory that somehow that Mr. Pfaff defrauded Mr. Hwang, you know, in the -- in the negotiations. When you're considering this question, you're going to have to consider the -- kind of the dual personalities that Mr. Hwang has been portraying himself as here. When he is talking about negotiating with Mr. Pfaff, he's -- he's kind of a bumpkin off the street that doesn't really know much about anything and kind of let David Pfaff railroad him and pull one over on him.

But when he -- on the other hand, though, he --

THE COURT: 10 minutes remaining.

MR. DALTON: -- when he comes here, he's, you know, the captain of industry. He's got lawyers from two continents here to represent him. So he's the savvy businessman. He told you about how much money he's making at HiCon Limited, how great he was at the company before Plastronics, how he started this company and made it millions of dollars. So he's got to be one or the other. He's -- he's either a bumpkin that can get the -- you know, wool pulled over his eyes in a negotiation, which is -- both parties had same bargaining power. Or he's the captain of

industry that he's portraying today with all his lawyers.

So I'd ask you to answer no to this question.

Next question is: What sum of money, if paid today in cash, would compensate H-Pin for what Mr. Hwang has done to them through a breach in the Royalty Agreement?

Again, I'd ask you to take Mr. Perry's analysis, almost $26 million. That's the harm that Mr. Hwang's HiCon Company Limited has put upon Plastronics.

Did Plastronics prove that Mr. Hwang breached the Assignment Agreement? Same thing holds. He licensed the Korean patent without the consent of Plastronics.

If you find that he breached the Assignment Agreement, you're going to have to find he breached the Royalty Agreement. Same conduct.

Mr. Hwang proved by a preponderance of the evidence that he was excused. This has to do with an accounting, so he wants to be excused that he wasn't getting an accounting. So he should be able to get away with whatever -- what he was trying to do to Plastronics here, what he has done to them, taken away their business. I would say no to this question.

Same question has to do with the Assignment Agreement, fraudulently induced. Same things hold. He was a sophisticated businessman. He was entering into an arm's length negotiation. He needed Plastronics's help. He

wanted their help. He wanted their technical expertise, and he wanted them to put up their own money to try to develop this.

For breach of the Assignment Agreement, give you the same figure, $26 million figure that Mr. Perry gave you yesterday.

Next question has to do with tortious interference. This has to do with HiCon Company Limited taking Plastronics's customers. You know, they inferred here that, well, you know, look, business is business, you know. This is -- this is what happens, you know. And that very well might be true. If Walmart wants to take Target's customers by giving them coupons, yeah, that's -- that's fair.

But when you enter into a fraudulent scheme and set up a fraudulent company to make phantom transactions in order to sell a product and tell people that you have permission to do something that you don't really have permission to do, that's fraud. And that's an independent tortious act. And when you use that to try to steal someone's customers, that's tortious interference. And that's exactly what happened here.

Same question. This time did Mr. Hwang conspire with HiCon Company Limited? I think the evidence shows that Mr. Hwang was the -- was right along with all of this. So I

would answer yes to the conspiracy question.

The amount of damages for tortious interference. I ask you to give Plastronics for the harm caused the number proposed by Mr. Perry, $11,231,676.00.

Did we prove malice by clear and convincing evidence? Well, we showed you the email. We showed you -- it's right there in black and white. They knew what they were doing was wrong when they came to the United States, and they knew -- they tried to hide the evidence so that Plastronics wouldn't see it. That's clear and convincing as far as can I see.

Question 19 has to do with exemplary damages. This is how they could be compensated. This is when you guys get to determine what these bad acts -- you know, what the harm was, what's the -- how are you going to tell HiCon Company Limited what they did was wrong?

I would -- and that's -- that's your decision. I would -- I would say -- my recommendation was to give them the number that they knew what was going to happen in that email where they said: Let's hide this stuff because a Texas jury might return three times the damages against us. Let's give them the three times, exactly what they knew was going to happen. So I'd multiply their award by three.

Question 21, same thing, malice. Clear and convincing. Gave you the exhibit numbers for the emails.

You can read them yourself. I'd answer yes.

Exemplary damages for their conduct -- again, multiply any damage award by three. Give them what they knew was going to happen.

I'm going to be able to come back after Mr. Emerson talks to you, and I'll be able to rebut what he has to tell you. So thank you very much.

THE COURT: Defendants may now present their closing argument to the jury.

MR. EMERSON: Thank you, Your Honor.

THE COURT: Mr. Emerson, would you like a warning on your time?

MR. EMERSON: I would love to have five and one, Your Honor.

THE COURT: I will warn you when you have five minutes and one minute remaining.

You may proceed with Defendants' closing argument.

MR. EMERSON: Thank you, Your Honor.

And may it please the Court, Court staff, Mr. Dalton, and ladies and gentlemen of the jury.

As I told you Monday afternoon, for Mr. Hwang, this case is not about the money. This trial is not about the money. This trial is about his invention and his right to practice his own invention, both here in the United States and back home in South Korea without Plastronics's

permission and without Plastronics's interference.

Now, there's no dispute that Mr. Hwang invented the H-Pin. There's no dispute that Mr. Hwang on his own -- his own decision decided to share that with Plastronics after he came to Plastronics. He invented it before he was at Plastronics. Plastronics had nothing to do with inventing the H-Pin.

And he decided to share it with someone who essentially lied to him, who essentially stole this invention from him, promised him he was going to get rich. That testimony was never rebutted. That he'd never have to work again.

And then they set out from the very beginning to figure out every way to keep him from actually practicing his own invention.

So Mr. Hwang, from the outset, even before he joined Plastronics, made it clear to Mr. Pfaff that he intended some day to go back to Korea. And he made it clear that he needed to be at least a co-owner on all the inventions and all the patents that arose from his time at Plastronics.

He told them he was not willing to give up ownership of his intellectual property. He told them when he left that he expected and hoped to be business partners with them. And he wanted to help Plastronics. You've seen

those emails where he says: How can we work together? How can I help you?

And Mr. Pfaff patted Mr. Hwang on the back, called him his Korean brother, and then he set out to take what was really his prized possession, this H-Pin invention.

And you saw him on the stand, and you saw how he lit up describing this thing. And you saw Mr. Schubring, as well. This really was a revolutionary invention in their world. Means nothing to us. I'd never heard of an H-Pin before I took on this case. Never heard of a socket. But it changed the world.

And, again, you don't have to take my word for it. You can take Mr. Pfaff's word for it.

Now, they've never paid him a penny on this, even though they've made a ton of money. And we've heard a lot about what Mr. Pfaff and Plastronics did for Mr. Hwang when he came over. And you heard Mr. Hwang tell you about that himself. He was thrilled to come over.

Mr. Hwang started this socket company in Korea called MCS, made it into a success. Gave that up to come here to the United States because he wanted his sons to be educated here.

So he was grateful for the opportunity, and he remains grateful. He told you that on the stand just the other day.

So, yes, Plastronics was very helpful, and the Pfaff family was very helpful to Mr. -- to Mr. Hwang. But they certainly got a lot out of it, didn't they?

In a moment, I'm going to put some of those numbers back up. And I've got a couple of new numbers that we learned this week that I will put up there, as well.

But what Mr. Hwang wants here, what he wants today, and whenever you are done deliberating is to be free of these people who lied to him, who refused to do business honorably with him, who in the business of suing him, ridiculing him behind his back, bad mouthing him to his customers. And you, ladies and gentlemen, have the power to give that to him. You can cut him free of Mr. Pfaff and Plastronics.

Now, do you all remember the Korean Conflict document? That's DX-52.

If you can pull that up, please?

This is Option No. 6 in the Korean Conflict document: Wait him out until he's completely out of cash and has to sell his IP and block all deals until I get what I want.

Well, that was 2011. And that didn't happen. He didn't go out of business. He wasn't forced to sell everything to Mr. Pfaff. And so that's why we're here. Mr. Pfaff wants to get what he wants. He thought he could

wait Mr. Hwang out. Instead, we're here.

And he wants your help. He wants your help to give him what he wants. And you can say no, and we're going to ask you to say no today.

So every trial is a story, and you've heard two different stories this week from two different sets of lawyers and sets of witnesses. But there's only one ending. And I don't write that ending. And Mr. Dalton doesn't write that ending. You all write that ending. You guys have the power to decide this. You guys write the final chapter.

So with the Court's permission, can I go to the easel?

THE COURT: You may.

MR. EMERSON: So here are some of the numbers that we discussed on Monday afternoon, and I think you'll remember them.

First, we have 90 million, which represents the 90 million H-Pins that Plastronics has made.

65 million, which represents the $65 million that Plastronics has made off of Mr. Hwang's invention.

I'm going to leave a little space here under 65 million.

60 percent, that is the proportion of their total business that is attributable to Mr. Hwang's invention.

Zero, and that's what they've paid him.

$26 million, that's what they want.

It is not enough, ladies and gentlemen, that Mr. Hwang shared his invention with Plastronics, and they paid him nothing. Now they want their own profits from every single sale that we've made. It's not enough that they haven't given him anything. They want everything he's made.

Now, what did it cost for Plastronics to make or rather to develop the H-Pin? Well, let's go back to what -- Mr. -- what Mr. Dalton told us on Monday morning.

And if you could pull up Day 1 p.m., Line 44 -- or, rather, Page 44, Lines 8 through 10. Here's what Mr. Dalton told you: Well, it took millions of dollars to do this, millions of dollars to do this project.

Let's go to Page 55.

He says: You're going to hear from Mr. Pfaff about the millions of dollars that Plastronics spent on this thing.

So what did Mr. Pfaff actually say?

Same day, please, Page 113.

And here are the questions: So from start to finish, for Plastronics to come up with a way of building his H-Pins in a cost-efficient manner, it was how long?

Two and a half years.

Okay. And roughly how much did that cost

Plastronics?

Go down to the bottom, and he says: But it was a million dollars in hard cost that we spent.

A million dollars, okay? So that's their cost. Again, that's not from me or any of my witnesses. That's from Mr. Pfaff, $1 million.

And I don't want to minimize what a million dollars is. A million dollars is a lot of money. I'd love to have a million dollars myself. But they got a pretty good return out of that, didn't they? 65 times over the last 14 years.

Mr. Dalton told you on Monday that the development costs were so high that Plastronics could not pay royalties. Those are your development costs right there, $1 million. You know what the gross revenues were, $65 million.

So let's talk about some of the key facts in this -- in this case and some of the key questions that you're going to be asked to answer.

The first of those is: Who sells the H-Pins? Who sells them outside of Korea, that is? Inside of Korea, Plastronics -- or rather, HiCon Limited sells internally. Who sells outside of Korea?

Let's remember why Mr. Hwang set up the DBA. Mr. Dalton says this is all a fraud. It's all pulling the wool over Mr. Pfaff's eyes.

Would you pull up DX-198, please, Mr. Brockwell?

Let's go back to 2009, and let's remember how we first got into this situation. Mr. Hwang has started his own company. He's starting to sell into the United States, or at least trying to. He gets sued by Mr. Pfaff and Plastronics. They have a dispute or a disagreement over whether his own company is considered another entity or a third party under the -- under the agreement.

Mr. Hwang disagrees with that, but in order to resolve the dispute, he says: Okay. Fine. Please give me your consent. Give me your consent.

And Mr. Pfaff doesn't give him his consent. He never says no, he never says yes, he never gives him a straight answer for several months.

So Mr. Hwang goes off and starts his -- his DBA, because even under Mr. Pfaff's reading of the contracts, Mr. Hwang has every right to practice his own patents. So that's what he does. And he explains all of this to Mr. Pfaff. He tells him: Look, give me your consent, please. If you give me your consent, I will pay you the royalty, one and a half percent on gross. Gladly do it, just to get this behind us. He doesn't get an answer.

So he says: Okay. Fine, I can sell through my sole proprietorship. And that's what he does. And he says: Again, if you have -- this is my understanding. If you have

another opinion, let me know.

And Mr. Pfaff never came back and said, no, I have another opinion, and here's why.

And then a little while later, the lawsuit is gone, and Mr. Hwang thinks problem solved, right? 2009, problem solved. Unfortunately, it's a hassle for him, but the problem's solved.

So what did Mr. Dalton say about the DB [sic] on Monday?

If we could pull up Page 54?

He said: You're going to see at some point in 2009, Mr. Hwang started using this generic name HiCon. And basically he was trying to kind of make it murky between who was it -- was it HiCon Company Limited or was it HiCon Company? And you'll see that -- the reason why he did this is he wanted it both ways, right?

Well, what do the documents say? And we talked about these. I thought what was interesting about Mr. Dalton's "opening close" is that their best evidence of their case is to tell you not to believe our evidence.

Ladies and gentlemen, I urge you to look at the documents, and they will not be back there with you. If you want to see a document, you need to request it, okay? So they're not going to all be back there with you.

So what documents do we have that -- that document

this DBA and -- and Limited and the difference between them?

Well, we have Defendants' Exhibits 260 and 261. Those are the business registration certificates. Those are the official Korean documents. They have the -- the business registration number on them that tell -- that identifies the business.

And so when you look at things like invoices, you can see by the number -- even if you're confused by the word HiCon, you can see by the number who was actually doing what.

We have DX-262. That is HiCon's bank book, and that tells you the account number. And you can match that account number with the account number on the invoices. And you can see who's getting paid. And generally speaking, the entity that's selling is the one that's getting paid. So you can match this number up with the invoices.

What else? We have DX-140. DX-140 is the supply agreement between the DBA and Limited, and it sets forth the parties' respective duties and obligations under that agreement. Ladies and gentlemen, he did all of this upright and official. There is no fraud here.

And then we go to the invoices. DX-477 is the stack of invoices to Micron.

DX-474 is the stack of invoices to ON Semiconductor.

And DX-285 is the stack of invoices to HiCon USA.

And you will see that they all show HiCon is the shipper/exporter. They show HiCon, the DBA, down in the lower right. They show the bank account for HiCon, the DBA, and the account name, HiCon.

Next, the tax receipts. Once again, official Korean documents that are filed with the government of Korea. The government of Korea requires businessmen or businesses to report to the government their sales. And so he does this every month. Yes, that's right. They are not always done out by every single product. These are cumulative. They're able to do it once a month, okay? So once a month, they submit one of these things to the Korean government.

Now, Mr. Hwang explained to you all why there's no tax on many of these, if not most of them, and that's because if a -- if a product is destined for export, the Korean government doesn't have -- doesn't require you to collect taxes on them.

What else do we have? We have Mr. Hwang's personal tax returns. You learned that Mr. Hwang has to pay personal income tax at a much higher rate on the net income that he gets from his business, HiCon.

Those are at DX-272 through 280. And I wish I'd put those all in one exhibit for you on Tuesday because I

know it was somewhat tedious walking through those, okay? But if you want to see those, you can get those. And every one of them has a line item for HiCon.

You have the Distribution Agreement which says what it says. It says -- and that's DX-82 -- that it's with HiCon, not HiCon Limited. He signs it for HiCon, not HiCon Limited. Yes, he calls himself president and CEO of his sole proprietorship, and he told you why he did that, too, because generally, in Korea, where titles are important, any business owner calls himself president or CEO or both.

And then we have Jae Hwang's email. That is DX-285. And here he explains exactly why they're doing what they're doing, which is exactly what Mr. Hwang explained to Mr. Pfaff back in 2009, right? They're doing this to comply with the agreements. Not to avoid them, but to comply with the agreements.

And this is why, because the patent belongs to HiCon Company. We can only sell through HiCon Company in the U.S. market, and this is what we have been doing with all U.S. markets.

So they would have you think that Mr. Hwang's son is just lying here. And there's no evidence to suggest that. Yes, this is just for the name and on the document it shows on PO, yes, because the documents have to be right. The invoices have to be right. The purchase orders have to

be right.

So all of this is documented. His DBA is documented. The receipts show who sells what to whom. We report all of this to the Korean government. And you have the opportunity to look at those documents if you'd like.

All right. The next issue I want to talk with you about is whether or not these agreements cover Mr. Hwang's Korean patent, okay? So remember the first patent was in Korea for the H-Pin. There's no dispute that Mr. Hwang owns that complete one, 100 percent.

And the question that you'll have to answer is whether these agreements cover Korea. And Mr. Dalton told you that all you have to do is look at the document. And that is just not so, ladies and gentlemen.

The Court here has held that that is an ambiguous matter. If it wasn't, he would answer it for you. But when it's ambiguous, it's your job. So that's why you have to answer this question. If the document itself was so clear on its face, then you wouldn't have this question, okay? So you have to think about and look at what the evidence shows.

So if you could pull that up, please.

This is the Royalty Agreement.

Call out Paragraph 5, please.

Paragraph 5 states that neither PSP nor Hwang can grant a license for patents covering the H-Pin Project

without approval.

Let's go to Paragraph 1.

And this makes clear that the patents on the H-Pin Project exclude Korea.

Now, that is -- there is some question there obviously because this is a question for you guys, but we would respectfully submit that this indicates, at least, that the parties understood that the Korean patent was excluded from these agreements.

The Assignment Agreement, you will need to construe alongside the Royalty Agreement. And what happened there is this. The Assignment Agreement calls for an assignment of -- of these patents worldwide. Every -- every foreign counterpart of the '602 patent, if you go by the literal terms of the Assignment Agreement, is supposed to be assigned 50/50 between them.

But they never did that. And no one's claiming that that was wrong. So when we're talking about H-Pin Project and the Assignment Agreement, we submit that those would exclude Korea.

You can also use logic. The Court told you that you're going to need to determine what the parties' intent was.

Now, why would Mr. Hwang ever agree to give Mr. Pfaff control over a patent that he hasn't assigned to

Plastronics to give him control over what he can and cannot do back in Korea when Plastronics has no rights there?

We also know from the negotiations that Mr. Hwang made it clear that he was excluding Korean. And you can look at DX-157 and DX-252 there for emails where Mr. Hwang has come out and told Mr. Pfaff, hey, I need to exclude Korea. I'm keeping Korea for myself.

And let's look at -- let's go back to the Korean Conflict. That's DX-52. And I want to go to the pros and cons. I believe that's on Page 2. All right. Let's go to the pros.

No. 5: Hwang can't enter any market other than Korea without our approval, since he needs to license his own company. Okay. He can't enter any other market than Korea without our approval, meaning he can enter the Korean market with his approval -- without the approval because he doesn't need that approval to license his own company in Korea. He's saying it right here, that they don't -- that he doesn't need approval in Korea.

And if you can pull up Cons No. 3.

We do not have any rights in Korea. Again, this is Mr. Pfaff talking. They do not have any rights in Korea. That's no rights. No rights in the patent, no rights to stop Mr. Hwang from practicing his patent, nothing. There's no qualification there.

Take that down. Thanks.

Now, I'm going to go through a few of these questions on the verdict form with you, and I'm not going to go through all of them, but I'm going to go through several.

And the first question is whether Plastronics H-Pin proved by a preponderance of the evidence that HiCon Limited directly infringed or induced infringement of Claim 1 of the '602 patent. And you saw this earlier.

And the answer to this question is: Well, who sold into the United States? And to answer that question, you look at the documents. What do the -- what do the invoices say? So the answer to that question should be no.

And I think the others will follow on from that.

And now we're going to get into the breach of the contract. The first question here is Question No. 4, which is did Mr. Hwang prove by a preponderance of the evidence that Plastronics H-Pin breached the Assignment Agreement?

And I'll have to agree with my colleague, Mr. Dalton here. There really probably are no damages here. It has been breached, though, because as the parties agree, an accounting is due when royalties are due. And I'm going to show you that royalties are due. But we never got an accounting, so there is a breach here on Question No. 4. I don't think there are any -- there are any damages on that, though.

But when we get to Question No. 6, did Mr. Hwang prove by a preponderance of evidence that Plastronics H-Pin breached the Royalty Agreement, well, how did they breach the Royalty Agreement? The Royalty Agreement requires that Plastronics pay a royalty to Mr. Hwang on all sales of H-Pins and all sales of H-Pins with sockets. And that royalty is based on gross sales minus NREs.

And you heard from Mr. Pfaff and you heard also from Mr. Perry that -- well, really what we're doing here is we're looking at profits, and we're deducting NREs from profits. That was their position. Well, the Court's resolved that.

Royalties are not paid based on a percentage of profits, but on gross sales. Royalties are to be paid when gross sales exceed the structured debt service payments attributable to the non-reoccurring capital costs. Royalties on gross sales may not be withheld simply because the entity -- the entirety of the non-reoccurring capital costs have not been fully discharged. So that answers your question there about whether we're going to take NREs off of profits or gross revenues.

So that should be a yes on Question 6.

Question 7: What is the number -- the sum of money if paid today in cash that would compensate them? And I have that number. That number is $1,361,860.00.

And if you're doing the math quickly in your head, it's not quite 3 percent of this minus this because, unfortunately, we can't go back all the way. We can only go back four years from the date of suit. So we don't get the royalty on all of this because Mr. Hwang didn't sue Plastronics when he had the opportunity to years ago when he didn't get royalties because he wouldn't have sued had he not been sued here this week.

Question No. 8. Now we're on the alleged breaches by Mr. Hwang. Did Plastronics H-Pin prove by a preponderance of evidence that Mr. Hwang breached the Royalty Agreement?

Well, the -- the alleged breach of the Royalty Agreement here is licensing the patents, the '602 patent and the Korean patent. We believe that you all should find the Korean patent is not at issue here. It was -- we told you Monday that it was signed long ago, that they really waited too long to sue. You can see that on that -- that license agreement. It was -- it was signed in October of 2008.

The only -- and that is the only license agreement that they showed you. Mr. Dalton put that license agreement up here twice. And the question I have for you or for him, rather, is: Where's the license to the '602 patent? Have they put a license to the '602 patent up here? They have not. The only license here is the license to the Korean

patent.

Mr. Hwang doesn't need to license the '602 patent to his Korean corporation because his Korean corporation doesn't practice the '602 patent, because it doesn't do anything in the United States. It makes everything in Korea.

And then his DBA -- as he explained to Mr. Pfaff back in 2009, his DBA sells all those goods overseas. So he hasn't shown you a license, and there's no need for one anyway.

So that would be a no, I believe.

All right. Question 9 is fraudulent inducement. And that question is: Did Mr. Hwang prove by a preponderance of the evidence that Plastronics fraudulently induced Mr. Hwang into entering into -- into the Royalty Agreement? And we would respectfully ask that you answer that yes.

Why is that? Well, fraudulent inducement is basically tricking someone to entering into a contract. There are three elements, intent -- I'm sorry, the false statement, intent to deceive, and reliance on that false statement.

And you heard Mr. Hwang say, which, of course, makes sense: I would never have signed these agreements had I known that they were never going to pay me a penny.

You also learned that Mr. Pfaff didn't even have the authority to sign the Royalty Agreement in 2005. All right. He -- Mr. Pfaff told Mr. Hwang that several years later. And you heard Mr. Hwang say: No, I would not have entered into that agreement had I known that Mr. Pfaff didn't have the authority to enter into that agreement.

So we would ask that you answer Question 9, fraudulent inducement, yes.

We don't think that Plastronics is entitled to any money. But I do want to talk about damages just a little bit.

The only measure of damages that they asked for is lost profits in this case. And lost profits requires that Plastronics can prove that they would have made the sales that HiCon made, okay? And that generally means showing that there's no one else out there selling a product that's a substitute.

You heard from Mr. Schubring and also from Mr. Hwang that there are a number of products out there. You also heard from Mr. Pfaff in the -- in "you changed the world" email, that all the stamped spring probe companies -- all the -- all the stamps -- all the spring probe companies are coming out with stamped spring probes, something along those lines, okay?

Mr. -- Mr. Schubring went through a list of 8 or

10 different manufacturers that are making this type of thing because Mr. Hwang did change the world, like Mr. Pfaff said, and everyone was coming up with similar products. So they haven't been able to show this but-for causation that but for HiCon selling these products, Plastronics would have sold them.

Now, did Plastronics prove by -- this is Question 11: Did Plastronics H-Pin prove that Mr. Hwang breached the Assignment Agreement?

Again, well, there are two -- there are two possible breaches here. One is licensing or assigning one of the patents without permission. And the other is this accounting, right?

Mr. Hwang doesn't owe an accounting because he doesn't owe any royalties. And he doesn't owe any royalties because he is the one, through his DBA, selling into the United States. So he doesn't owe any royalties, and because he doesn't owe any royalties, he doesn't owe an accounting.

The other thing is assigning -- again, assigning or licensing the patents. The -- again, same issue here. They showed you the Korean patent license. They did not show you a license to the '602 patent. So where is that?

Question 13 is another fraudulent inducement question. Did Mr. Hwang prove by a preponderance of the evidence that Plastronics fraudulently induced Mr. Hwang to

enter into the Assignment Agreement? And the answer to that would be the same for No. 13, which is a yes.

THE COURT: Five minutes remaining, counsel.

MR. EMERSON: Thank you, Your Honor.

We don't believe there are any damages due.

No. 15 is tortious interference. And here's what they have to show to prove up tortious interference, that Mr. Hwang committed an independent tortious act, which here is supposedly either breaching the -- the -- the agreements or somehow inducing patent infringement or something like that.

But here's the thing. They have to show that Mr. Hwang intended to harm Plastronics. And I don't think they have shown you any of that. I also don't think they have shown you any of the underlying torts that would support a tortious interference count.

And those are all of the questions I'm going to go over.

The last thing I want to talk about is this Exhibit PX-922 that Mr. Dalton talked about a little bit on his opening and Mr. Bear, you may recall, talked to Mr. Schubring about yesterday. And that is the email chain between Mr. Hwang and -- and HighRel about the 2018 BiTS show. So let's reset the scene here.

It is January of 2018. Mr. Hwang and HiCon USA,

HighRel, have entered into this partnership where Mr. Hwang has hired HighRel to be the distributor for his company's products.

This is their first BiTS show to do together. And you may recall that in 2009, Mr. Pfaff sued Mr. Hwang at the BiTS show, had him served at the BiTS show. In fact, had a process server serve him and his wife at the BiTS show.

So now we're at another BiTS show nine years later, and Mr. Hwang is understandably concerned because he's just gotten sued.

Would you put it up, please?

So let's go down to -- no, let's go back to the first page -- the second page, please.

This is PX-922, and they think this is an important document, so it is. And so we want you to look at it, too, because I don't think it says what they say it says. They say it says that he essentially admitted to wrongdoing here. And that is not what he's doing. He's being careful. He has been sued. He is trying to be as prudent as he possibly can.

Let's go up to the very first email on the first page.

And here he explains what he's doing and why. This time is very important to me and HiCon. We are busy developing new technologies. I need to concentrate on this,

but Plastronics filed a lawsuit, and I have to fight against Plastronics with a very good Korean law firm and a Dallas law firm. So no need -- so need to pay pretty much for legal issue, and also going to lose a lot of important time on this.

And so he's trying to minimize the harm or the risk to his company.

THE COURT: One minute remaining.

MR. EMERSON: Thank you.

Can we go to the second page, please?

And what's im -- what I want you to focus on here is this. There is an email from Mr. Gordon Cowan. Gordon Cowan is Paul Schubring's boss. And what he tells Mr. Hwang is important. What he tells Mr. Hwang is: You can't give into the bully. If we demonstrate fear, they will believe they have the right to bully HiCon. Don't give into the bully.

Ladies and gentlemen, that's why we are here. Mr. Hwang is not giving into the bully. Mr. Hwang is standing up for himself.

In 2009, he backed down a little bit. He changed his business arrangement so that he sold through his DBA and not through his corporation. But now his -- his business and his livelihood is on the line. He would like to do what the Pfaffs have done. Wayne Pfaff built a great business.

He passed it on to his son. Mr. Hwang would like to do the same thing.

And so we ask for your verdict. We thank you very much for your time and your attention. It has been a privilege to spend the week with you. Thank you very much.

THE COURT: All right. Counsel, if you'll replace the easel.

And, Mr. Dalton, you may proceed with the Plaintiffs' final closing argument. You have two minutes and 14 seconds left. Would you like any warning?

MR. DALTON: Two minutes, Your Honor.

THE COURT: That means 14 seconds in, I'm going to warn you.

MR. DALTON: Oh, I'm sorry.

THE COURT: You have two minutes and 14 seconds remaining.

MR. DALTON: Thank you. Yes, if you could give me a two-minute warning -- on the additional, that would be 12, and that's 14 seconds, Your Honor?

THE COURT: You have a total of two minutes and 14 seconds of your time left.

MR. DALTON: Oh, thank you. Okay. Understood.

THE COURT: Proceed with your final closing argument.

MR. DALTON: You know, couple years ago, I had

this experience, and I got to sit on a jury. And it kind of changed my approach to how I do things up here. And I remember when I was sitting in your seat, I kind of thought to myself -- what I was thinking was, man, I've heard this 50 times. Why do you keep telling me this? But this is -- this is so important to Plastronics, the people who work there, Mr. Pfaff, and they have entrusted me in trying to get the truth to you. And I need to get this truth out to you. So if I am repeating myself or this is something you already know, I apologize.

I was trying to write down of all the flawed argument and the falsehoods said by Mr. Emerson, but I kind of ran out of paper.

The first thing here is that, you know, this notion that Mr. Pfaff didn't have authority from Plastronics Socket Partners. There's no evidence of that. Mr. Pfaff had the authority to sign on behalf of Plastronics Socket Partners. This had something to do with general partnerships and limited partnerships, and at the time Mr. Pfaff's father had the right to sign agreements for the IRS. That's -- that's all that's going on here. That's -- that's kind of a -- that's a Hail Mary right there.

Mr. Emerson also said during his close, he said that Mr. -- Mr. Hwang hired HighRel to sell his company's products. So there you go. I think he just admitted that,

you know, his company -- his company being HiCon Limited.

It's interesting -- I shouldn't be surprised at the Defense's argument because usually when -- it's a tactic when you -- when you don't have the facts, you try to, you know, explain away something that should be really simple with complexity and hope that people think that such a complex issue, that, you know, it must be right. But it's very simple. If there were sales made between HiCon Company Limited and the DBA, there would be an invoice, and there'd be an actual invoice saying a price, supply, and everything else, and it would have been in -- evidence of a transaction. We don't have any of that there.

Then they're just going to throw hundreds of documents at you. And Mr. Emerson said, well, all those documents -- you know, if you want those -- I know there's a lot of them, so go fish it out because we don't have any evidence which would be very simple. Yes, I bought this on this day for this amount.

I want to talk a little bit about the -- these agreements and what they do and what they say and what they don't say.

PX-300 is the -- the Royalty Agreement. You know, Mr. Emerson said that, well, look, there's some question about, you know, what patent was at issue here.

Look at PX-230 --

THE COURT: Mr. Dalton, you have 30 seconds left.

MR. DALTON: If you look at the Assignment Agreement, read the -- read the -- read the document for yourself. It says what a third party is. Mr. -- Mr. Pfaff never wanted a third party company to compete against him. That's what he was trying to fight against.

Definition, H-Pin Project is that Korean patent. So always -- always have the obligation to limit how he could transfer that license, wasn't limiting his ability to practice it by himself in his garage by himself, but not through a company.

Thank you.

THE COURT: All right. Ladies and gentlemen of the jury, I'd like to provide you with a few final instructions before you begin your deliberations. You must perform your duty as jurors without bias or prejudice as to any party.

The law does not permit you to be controlled by sympathy, prejudice, or public opinion.

All parties expect that you will carefully and impartially consider all the evidence. Follow the law as I have given it to you, and reach a just verdict, regardless of the consequences.

Answer each question in the verdict form from the facts as you find them to be in this case, following the

instructions that the Court has given you.

As I said before, do not decide who you think should win and then answer the questions accordingly. Your answers and your verdict in this case must be unanimous.

You should consider that this is a case involving a dispute or disputes between persons of equal standing and of equal worth holding the same or similar stations in life. This is true between corporations, partnerships, sole proprietorships, and individuals.

The law recognizes no distinction among types of parties. All of these entities and individuals stand equal before the law, and regardless of their size or who owns them, they're to be treated as equals.

When you retire to the jury room to deliberate on your verdict, you're going to each have a copy of these instructions that I've given you. However, if you desire to review during your deliberations any of the exhibits that the Court has admitted into evidence during the course of the trial, then you should advise me of that exhibit or those exhibits which you wish to see by a written note written and signed by your foreperson and delivered to the Court Security Officer. The Court Security Officer will bring that note to me, and I will return those exhibits -- that exhibit or those exhibits to you.

Once you retire, you should first select your

foreperson and then conduct your deliberations.

If you decide to recess during your deliberations, follow all the instructions that the Court has given you about your conduct throughout the trial.

After you've reached a verdict, your foreperson is to fill in your unanimous answers to the questions in the verdict form, date the verdict form, and sign the verdict form.

Do not reveal your answers until such time as you're discharged, unless otherwise instructed by me. And you must never disclose to anyone, not even to me, your numerical division on any question.

Any notes that you may have taken over the course of the trial are aids to your memory only. If your memory should differ from your notes, rely on your memory and not your notes. The notes are not evidence.

And a juror should, who has not taken notes, should rely on their own independent recollection of the evidence and should not be unduly influenced by the notes of other jurors.

Notes, ladies and gentlemen, are not entitled to any greater weight than the recollection or impression that each juror has about the testimony.

If during your deliberations you want to communicate with me at any time, you should give a written

message or a question in written form signed by your foreperson to the Court Security Officer who will bring it to me. And I will then respond as soon as possible, either in writing with a note sent back to you or by having you brought back into the courtroom where I can address you orally.

However, I will always first disclose to the attorneys in the case for both sides your question and my response before I send a response or an answer to you.

After you have reached a verdict and after I have discharged you from your duty as jurors in this case, at that point, ladies and gentlemen, you are not required to talk with anyone about your service in this case unless the Court orders otherwise.

By the same token, at that time, after you have returned a verdict that I have accepted and I have excused you as jurors, you are then free to talk about your service as jurors with anyone of your choosing. At that point in time, that choice will be totally and 100 percent up to each of you.

I'm now going to hand eight copies of these written jury instructions for each of you to the Court Security Officer, along with one clean copy of the verdict form.

Ladies and gentlemen of the jury, you may now

retire to the jury room and conduct your deliberations. We await your verdict.

COURT SECURITY OFFICER: All rise.

(Jury out.)

THE COURT: Counsel, before you should -- before you leave the courtroom, and you are certainly welcome to wait in the courtroom and in the courthouse while the jury deliberates, but should you choose to leave the courthouse, be sure that my law clerks have a good cell phone number so that you can be called if we should receive a note or a return of a verdict, and we can get you back here quickly.

Pending either a note from the jury or the return of a verdict, we stand in recess.

(Jury deliberations.)

****

CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/s/Shelly Holmes
SHELLY HOLMES, CSR, TCRR
OFFICIAL COURT REPORTER
State of Texas No.: 7804
Expiration Date: 12/31/20

7/11/19
Date